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6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 JEFFREY E. HOFFMAN,

No. 3:07-CV-2417 MHP

11 Plaintiff,

12 vs.

13 THOMAS R. LLOYD, an individual,
14 EDWARD L. BLUM, an individual, and
DOES 1 through 20, inclusive,,
15

16 Defendants.

17 THOMAS LLOYD,

18 Cross-Plaintiff,

19 vs.

20 JEFFREY E. HOFFMAN, dba H&B
PROPERTIES; H&B PROPERTIES, LLC;
21 J. EDWARDS INVESTMENT GROUP,
INC., and NORCAL FINANCIAL, INC.,
22

23 Cross-Defendants.

24
25 **APPELLANT'S EXCERPTS OF RECORD ON APPEAL**

26 **VOLUME V**
27
28

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1.	Answer – Unlawful Detainer (Trial Exhibit 10)		1-4
2.	Settlement and Mutual Release Agreement (Trial Exhibit G)		5-9
3.	Complaint for Damages and to Cancel Instrument (filed April 5, 2005)		10-29
4.	Cross-Complaint for (1) Declaratory Relief; (2) Avoidance of Fraudulent Conveyances and/or Obligations; (3) Transferee Liability; (4) Quiet title; (5) an Accounting; (6) Determination of Validity, Extent and Priority of Liens; and (7) Objection to Claim (filed June 16, 2005)		30-60
5.	Declaration of Thomas Lloyd in Support of Motion for Summary Judgment (filed 1/20/06)	39	61-82
6.	Tentative Ruling Re Plaintiff's Motion for Summary Judgment (filed February 16, 2006)	55	83-85
7.	Order Denying Motion for Summary Judgment (filed February 21, 2006)	57	86-89
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9.	Decision After Trial (Phase One) (filed March 20, 2006)	59	295-297
10.	Hearing Transcript of Defendant's Motion for Summary Judgment (filed April 28, 2006)		298-330
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22.	Reply Memorandum of Points and Authorities in Support of Defendant Thomas Lloyd's Motion for Summary Judgment.	78	473-485
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DATED: July 13, 2007

GOLDBERG, STINNETT, DAVIS & LINCHEY
A Professional Corporation

By: /s/ Dennis D. Davis
Attorneys for Appellant Jeffrey E. Hoffman

DOCUMENT 20

325-002

Entered on Docket
December 22, 2005
GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: December 21, 2005

Thomas E. Carlson
THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No: 04-32921 TEC
THOMAS LLOYD,)	Chapter 11
Debtor.)	
JEFFREY E. HOFFMAN,)	
Plaintiff,)	Adv. Proc. No. 05-3328 TC
v.)	<u>TRIAL SCHEDULING ORDER</u>
THOMAS R. LLOYD, an individual,)	B.R. 7016
EDWARD L. BLUM, an individual, and)	Fed. R. Civ. P. 16
DOES 1 through 20, inclusive,)	
Defendants.)	
THOMAS LLOYD,)	
Cross-Plaintiff,)	
v.)	
JEFFREY E. HOFFMAN, an individual)	
doing business as H & B PROPERTIES;)	
H & B PROPERTIES, LLC, a California)	
limited liability company,)	
J. EDWARDS INVESTMENT GROUP, INC.,)	
a California corporation, and)	
NORCAL FINANCIAL, INC., a Nevada)	
corporation,)	
Cross-Defendants.)	

A status conference in the above-entitled matter was held

TRIAL SCHEDULING ORDER

-1-

1 on December 15, 2005. Cheri L. MacArthur appeared for Plaintiff.
2 Jeffrey J. Goodrich appeared for Defendant. Upon due
3 consideration, the court hereby establishes the following schedule:

4 (1) Phase I of the trial, concerning the enforceability of the
5 settlement, will commence on January 10, 2006 at 9:30 a.m., at the
6 United States Bankruptcy Court, 235 Pine Street, Twenty-Third
7 Floor, San Francisco, CA. Seven calendar days before the trial
8 date, counsel shall inform the courtroom deputy (Gordon Hom (415)
9 268-2362) whether the parties have settled and, if not, how much
10 time the trial will require. During the week prior to the trial
11 date the court may reschedule the trial to a later day during the
12 week of the trial date. Counsel should be prepared to go to trial
13 at any time during the week of the trial date.

14 (2) Seven calendar days before the scheduled trial date,
15 counsel shall: (a) serve and file trial briefs (briefs shall not
16 exceed twenty-five pages without prior permission of the court);
17 (b) exchange copies of all exhibits to be offered, other than those
18 to be used for impeachment or rebuttal; (c) serve and file
19 statements designating excerpts from depositions, answers to
20 interrogatories and requests for admission, other than those to be
21 used for impeachment or rebuttal; and (d) exchange a list of
22 expected witnesses, other than those to be called for impeachment
23 or rebuttal, including a brief summary of each witness' expected
24 testimony.

25 (3) Counsel shall also: (a) premark all exhibits before
26 trial (Debtor's exhibits should be marked by number, Creditor's
27 exhibits should be marked by letter); (b) bring sufficient copies
28 of exhibits for all counsel, the witness, and the court; (c) in
any case in which the party expects to offer more than ten

TRIAL SCHEDULING ORDER

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1 exhibits, place the exhibits in a three-ring binder with an
2 appropriate tab attached to each exhibit; (d) number the pages of
3 any exhibit that has more than one page; (e) promptly advise the
4 opposing party of any objections to the introduction of the
5 opposing party's proposed testimony or exhibits; and (f) meet
6 before trial to attempt to reach agreement regarding the
7 admissibility of testimony and exhibits.

8 The court may exclude evidence, postpone trial, or impose
9 monetary sanctions for failure to comply with this order.

10 IT IS SO ORDERED.

11 **END OF ORDER**

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TRIAL SCHEDULING ORDER

-3-

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DOCUMENT 21

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 Debtor in Possession

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

In re:

THOMAS LLOYD,
 Debtor

JEFFREY E. HOFFMAN,
 Plaintiff,

v.

THOMAS R. LLOYD, an individual, EDWARD
 L. BLUM, an individual, and DOES 1 through
 20, inclusive,

Defendants

AND RELATED CROSS-ACTION,

Cross-Defendants

CHAPTER 11

Case No. Case No. 04-32921-TEC

Adv. No. 05-03328

MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 DEFENDANT THOMAS LLOYD'S
 MOTION FOR SUMMARY JUDGMENT

DATE: February 24, 2006
 TIME: 9:30 a.m.
 COURT: 23rd Floor, 235 Pine Street, S.F.

MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF MOTION
 FOR SUMMARY JUDGMENT

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MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

I.

INTRODUCTION

This Adversary Proceeding involves a real estate transaction between Plaintiff Jeffrey Hoffman ("Hoffman") and Defendant Thomas R. Lloyd ("Lloyd"). The transaction involved Lloyd's home at 940 Elizabeth Street, San Francisco. The transaction was documented as a sale from Lloyd to Hoffman, but Lloyd retained possession of the home under a two year lease. He also retained an option to repurchase the home for an unstated price, but only if he was not in default under his "lease".

Because Lloyd's home was in foreclosure at the time of the transaction, Hoffman's written contract with Lloyd had to comply with the Home Equity Sales Contract law (Cal. Civ. Code §1695 et seq., hereinafter "1695"). It is undisputed that Lloyd never signed a 1695-compliant contract and that Hoffman violated 1695 when he closed escrow and recorded his Grant Deed.

Nevertheless, Hoffman attempted to evict Lloyd from his home. On the eve of his unlawful detainer trial, Lloyd and Hoffman entered into a written settlement agreement that contained a mutual release of all claims "known and unknown" and a waiver of Civil Code §1542. The settlement agreement makes no mention of 1695, did not restore title to Lloyd, and gave Lloyd no right to rescind the original transaction. Rather, it gave Lloyd three months to repurchase the home for the sum of the existing mortgage and a stipulated judgment in favor of Hoffman's wholly owned company, H & B Properties ("H & B").

After Lloyd signed the settlement agreement, Hoffman borrowed \$110,000 secured by a lien against the home. Then, when Lloyd attempted to repurchase the home within the three month period, Hoffman demanded that Lloyd also pay Hoffman's post-settlement loan, even though the

1 settlement agreement obviously did not require him to do so. Lloyd refused. Instead, he exercised
2 his rights under 1695 and recorded a Notice of Rescission against the property.

3 Hoffman responded by suing Lloyd and his attorney, Edward Blum, for slander of title,
4 cancellation of the Notice of Rescission, and breach of the settlement agreement. Lloyd cross-
5 complained for declaratory relief and quiet title, among other claims for relief. Based upon
6 Hoffman's recent admissions in deposition, Lloyd brings this motion for summary judgment as to
7 Hoffman's entire complaint and for judgment in favor of Lloyd on his declaratory relief and quiet
8 title claims for relief.
9

10 II.

11 STATEMENT OF FACTS

12 In May 2003, Lloyd's home at 940 Elizabeth Street ("Residence") was in foreclosure.
13 Declaration of Thomas Lloyd in Support of Motion for Summary Judgment ("Lloyd Dec"), ¶2.
14 While Lloyd was in foreclosure, Hoffman and Lloyd entered into three written agreements each
15 dated May 28, 2003. Lloyd Dec, ¶3. One agreement is a standard form Real Estate Purchase
16 Contract ("Purchase Contract"). Lloyd Dec, Exhibit "A". Another agreement is a Residential Lease
17 After Sale ("Lease"). Lloyd Dec, Exhibit "B". The last agreement is an Option Agreement. Lloyd
18 Dec, Exhibit "C".

19 Under the Purchase Agreement, Hoffman agreed to purchase the Residence for the sum of
20 \$900,000. Lloyd Dec, Exhibit "A". Lloyd believes that the home was worth at least that much at
21 that time. Lloyd Dec, ¶5. Contrary to the terms of the Purchase Agreement, Lloyd did not actually
22 receive, either directly or indirectly, more than \$635,000 from the "sale" of his home.
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1 Hoffman did not purchase the Residence for the purpose of using the property as a personal
2 residence. Lloyd Dec, Exhibit "B". Rather, he leased it to Lloyd and gave Lloyd the right to buy
3 back the Residence during the term of the Lease. Lloyd Dec, Exhibits "B" and "C". The Option
4 does not specify a strike price nor sets forth any of the terms on which Lloyd, as holder of the
5 Option, could elect to buy back the Residence. Lloyd Dec, Exhibit "C". Lloyd believed that the
6 amount he needed to pay Hoffman to buy back his home was less than \$650,000 at the time Lloyd
7 signed the Purchase Agreement, Lease and Option. Lloyd Dec, ¶6.

8
9 In 2004, Hoffman transferred title to the Residence to H & B Properties. Hoffman's
10 Complaint, ¶14. H & B Properties ("H & B") is wholly owned by Hoffman. In June 2004, H & B
11 filed an eviction action against Lloyd. Lloyd Dec, ¶6. Lloyd employed an attorney, Edward Blum
12 ("Blum") to defend the action. Id. The trial was set for July 19, 2004. Id.

13
14 On or about July 12, 2004, Lloyd traveled to Fresno, California to meet with Mr. Hoffman.
15 Lloyd Dec, ¶7. He was afraid he was going to lose the unlawful detainer trial and his home. Id. At
16 that time, he knew nothing about any rights he had under Civil Code §1695. Id. He did not know
17 that he had a right to cancel the Purchase Agreement even though he had already transferred title to
18 Hoffman. Id. He did not know that he had a right, independent of his right in the Option, to require
19 Hoffman to transfer the title back to him. Id. He did not know he had a right to require Hoffman to
20 pay Lloyd's fees in the event he was forced to bring suit to enforce his rights. Id.

21
22 Rather, Lloyd assumed that because he had transferred title to Hoffman and he did not have
23 the amount of unpaid rent that the Lease and Option required him to pay, there was no way he could
24 recover his home unless Hoffman agreed. Lloyd Dec, ¶8. So he met with Hoffman to try and settle
25 with him on terms that would allow him an opportunity to buy back his home. Id. The settlement
26 they reached was thereafter memorialized in writing. Id.

1 On or before August 3, 2004, Hoffman, Lloyd and H & B executed the writing, entitled
2 Settlement and Mutual Release Agreement ("Settlement") Lloyd Dec, ¶9. The Settlement contains
3 no reference to Civil Code §1695 or to any right Lloyd had to rescind the sale of the Residence to
4 Hoffman. Lloyd Dec, Exhibit "D". The Settlement also does not contain any opportunity for Lloyd
5 to rescind the Settlement. Id. Under the Settlement, Hoffman retained title to the Residence. Id.

7 The Settlement contains a mutual release of all claims, known and unknown, "arising from
8 the Action, arising from or related to the Property, the purchase by H & B, the Lease, or the
9 Option..., except as set forth hereinbelow." Id. The only relevant claims "set forth hereinbelow" in
10 the Settlement, other than Lloyd's right to repurchase or sell the Residence, are: 1) a Stipulated
11 Judgment in favor of H & B in the amount of \$60,886.17 plus \$3,500 for attorneys fees and court
12 costs, and 2) any amounts owing to H & B during the 90 day forbearance period as a result of
13 Lloyd's status as a holdover tenant. Id. The Settlement does not identify any other claims that either
14 Hoffman or H & B reserved.

16 At the time Lloyd executed the Settlement, he still knew nothing about any rights he had
17 under Civil Code §1695. Lloyd Dec, ¶9. He did not know that he had a right to cancel the Purchase
18 Agreement even though he had already transferred title to Hoffman. Id. He did not know that he
19 had a right, independent of his right in the Option, to require Hoffman to transfer the title back to
20 him. Id. He did not know he had a right to require Hoffman to pay Lloyd's fees in the event he was
21 forced to bring suit to enforce his rights. Id.

24 After execution of the Settlement Agreement, Lloyd attempted to perform his obligations
25 under the agreement by listing the property for sale with a broker and, alternatively, finding a buyer
26 himself. Lloyd Dec, ¶10. When he attempted to list the property for sale, he was told he needed to
27 obtain the consent of Hoffman because he was the only person on title. Id. He called Hoffman to ask
28

1 him to list the property. Id. Hoffman did not return Lloyd's call for some time, and when he did he
2 told Lloyd he had a buyer and could save Lloyd a commission if Lloyd sold it to Hoffman's buyer.
3 Id. By then, Lloyd had two potential buyers who would not require the payment of a commission,
4 but Lloyd needed Hoffman to tell Lloyd how much he would need to pay him to buy back Lloyd's
5 home. Id. Hoffman told Lloyd he would get back to Lloyd with that information, but he never did.
6 Id. Lloyd called him several times after that, but Hoffman never returned those calls. Id.
7

8 On August 9, 2004, after the complete execution of the Settlement, H & B executed a
9 Promissory Note in favor of Norcal in the amount of \$110,000 and secured that obligation with a
10 Deed of Trust recorded against the Residence. On October 13, 2005, Hoffman's counsel demanded
11 that Lloyd pay Norcal's claim in full as a condition to exercising Lloyd's rights under the Settlement
12 Agreement. Lloyd Dec, ¶11. At no time has Lloyd ever borrowed any money from Norcal Financial
13 secured by his home and Lloyd never agreed that Hoffman could encumber title to his home in favor
14 of any lender other than Greenpoint Mortgage. Lloyd Dec, ¶12.
15

16 On October 15, 2005, Lloyd filed for relief under Chapter 11 of the Bankruptcy Code. On
17 October 18, 2005, he recorded against the Residence a Notice of Rescission of Grant Deed Recorded
18 Pursuant to Home Equity Sales Contract (See, Hoffman's Complaint herein, Exhibit "C"). The
19 Notice demanded that Hoffman and H & B transfer title of the Residence back to Lloyd. Id.
20 Hoffman thereafter filed suit against Lloyd and Blum for slander of title, cancellation of the Notice
21 of Rescission, and damages for breach of the Settlement. Hoffman's Complaint herein. Lloyd
22 cross-claimed for declaratory relief, quiet title and other related claims, and removed the entire
23 action to this court. See, Lloyd's Notice of Removal, filed herein.
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1 This Court thereafter bifurcated the issues and set for trial the issue of whether the Settlement
 2 is enforceable. Lloyd hereby moves for summary judgment as to all causes of action in Hoffman's
 3 Complaint and the First and Fourth Causes of Action in Lloyd's Cross-Complaint
 4

5 6 III.

7 ARGUMENT

8 A. Civil Code §1695 Governs Hoffman's Purchase of the Residence

9 Under Civ. Code §1695.1(b), a "residence in foreclosure" is defined as residential property
 10 consisting of one- to four-family dwelling units, one of which the owner occupies as his or her
 11 principal place of residence, and against which there is an outstanding notice of default. Lloyd's
 12 Residence clearly qualifies as a "residence in foreclosure." It is residential real property consisting
 13 of two dwelling units, one of which Lloyd occupied during all of 2003. As of May 28, 2003, the
 14 date of the Purchase Contract, Lease and Option, there were two "outstanding notice[s] of default"
 15 recorded against the Residence.
 16

17 Under Civ. Code §1695.1(a), an "equity purchaser" is any person who acquires title to a
 18 residence in foreclosure. Although the subdivision lists several exceptions to this general rule,
 19 Hoffman qualifies for none of them. See, §1695.1(a)(1) – (6). He did not purchase the Residence
 20 for the purpose of using it as a personal residence and he is not at all related to Lloyd.
 21

22 Similarly, Lloyd was an "equity seller" under Civ. Code §1695.1(c), as he was clearly the
 23 seller of a residence in foreclosure. He was also a "property owner" under Civ. Code §1695.1(f)
 24 because he held record title of the Residence on the date the two notices of default were recorded.
 25

26 Finally, Civ. Code §1695.1(e) defines "contract" as any agreement, or any term thereof,
 27 between an equity purchaser and equity seller incident to the sale of a residence in foreclosure.
 28

1 Under that definition, the Purchase Agreement, Lease and Option all constitute a "contract" under
2 the provisions of §1695.

3
4 In sum, there is no triable issue of fact as to Hoffman's obligations under §1695. As the
5 "equity purchaser" of a "residence in foreclosure", he was clearly required to comply with all
6 applicable provisions of the law.

7 **B. Hoffman Violated Several Provisions of §1695**

8
9 1. Hoffman Violated §1695.2

10 Civil Code §1695.2 requires that "every contract" be written in letters of a size equal to 10-
11 point bold type. None of the three documents memorializing Hoffman's purchase of the Residence
12 meets this requirement. See, Purchase Agreement, Lease and Option ("Lloyd Dec., Exhibits A -C.

13
14 2. Hoffman Violated §1695.3

15 Civil Code §1695.3 requires that "every contract" shall contain the entire agreement of the
16 parties and shall include a Notice of Cancellation in 12-point type, as provided in §1695.5(b). Civ.
17 Code §1695.3(g). In addition, the contract must include, in at least 14-point boldface type, a specific
18 form of "Notice Required By California Law" Civ. Code §1695.3(h).

19 Here, the "contract", as defined by Civil Code §1695.1(e), is at least the Purchase
20 Agreement, but probably also includes the Lease and Option as "incident to the sale of a residence in
21 foreclosure". But regardless of whether one or all three documents constitute the "contract" in this
22 case, the contract includes neither the statutory Notice of Cancellation nor the Notice Required By
23 California Law. Indeed, the contract makes no reference at all to any right of rescission, any
24 "cooling off period" or any other rights Lloyd was entitled to have explained to him in at the time of
25 the transaction.
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1 3. Hoffman Violated §1695.5(a)

2 Civil Code §1695.5(a) requires that Hoffman's contract contain in immediate proximity to
3 the space reserved for Lloyd's signature the following statement in 12-point bold type:

4 **"You may cancel this contract for the sale of your house without any penalty
5 or obligation at any time before [insert date and time rescission right ends].
6 See attached notice of cancellation form for an explanation of this right."**

7 Hoffman's contract contains no such statement. Again, it fails to disclose any
8 information whatsoever about Lloyd's rescission rights under §1695.

9 4. Hoffman Had a Duty to Prepare a Valid Contract

10 Civil Code §1695.6(a) states that the contract required by the foregoing provisions
11 (§§1695.2, 1695.3 and 1695.5) "shall be provided and completed in conformity with
12 those sections by the equity purchaser." Here, that was Hoffman.

13 **C. Hoffman's Violations Gave Lloyd the Absolute Right to Cancel Hoffman's Purchase**

14 1. Civil Code §1695.4 Gives Lloyd an Absolute Right to Cancel the Sale

15 Civil Code §1695.4(a) grants to an equity seller the absolute right to cancel any contract with
16 an equity purchaser "until midnight of the fifth business day following the day on which the equity
17 seller signs a contract that complies with this chapter" Because Lloyd, the equity seller in this
18 case, has never "sign[ed] a contract that complies with [1695]", his right to cancel has never expired.

19 2. Civil Code §1695.5 Gives Lloyd an Absolute Right to Cancel the Sale

20 Civil Code §1695.5(d) expressly authorizes Lloyd to cancel the contract "until the equity
21 purchaser has complied with [§1695.5]...." There is no time limit to this right of cancellation until
22 the notice required by §1695.5 has been given. Miller & Starr, Cal. Real Estate 3rd, Deeds of Trust,
23 §10:144, p. 437. Therefore, because Hoffman has never complied with §1695.5, Lloyd has an
24 absolute right to cancel the contract under §1695.5(d). Moreover, because Civil Code §1695.3(h)
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1 provides that a home equity sales contract "shall survive delivery of any instrument of conveyance
2 of the residence in foreclosure", Lloyd's right to cancel the contract survived Lloyd's grant deed to
3 Hoffman.

4
5 In sum, the only defense Hoffman has to Lloyd's absolute right of cancellation is the effect,
6 if any, of the Settlement.

7 **D. As a Matter of Law, the Settlement Release is Unenforceable**

8 Hoffman argues that Lloyd relinquished all of his rights and remedies under §1695 when he
9 executed the Settlement and Release Agreement ("Settlement"). Lloyd does not dispute Hoffman's
10 characterization of the effect of the Settlement. Rather, Lloyd argues that the Settlement is not
11 enforceable as it is contrary to law and public policy.

12
13 1. The Plain Language of Civil Code §1695.10 Makes Lloyd's Release Waiver Void

14 A victim of predatory lending practices can never waive the rights and remedies he has under
15 Civil Code §1695. This is because the statute unequivocally mandates that any waiver of the
16 provisions of §1695 "is void and unenforceable as contrary to public policy." Cal. Civ. Code
17 §1695.10.

18
19 Generally, the words of California's statutes are to be given their plain and common sense
20 meaning. Hughes v. Board of Architectural Examiners (1998) 17 Cal. 4th 763, 775 (1998). Put
21 another way, if the words of a statute are clear and unambiguous, the plain meaning of the statute
22 governs (Estate of Griswold, 25 Cal. 4th 904 (2001) and there is no need for judicial construction.
23 People v. Howard, 100 Cal. App. 4th 94 (2002).

24
25 Thus, where no ambiguity exists, and the language permits only one construction,
26 the intent of the legislature in enacting a statute is to be gathered from the words
27 and language employed, read as a whole, according to the usual and ordinary
28 import of the language employed, and in context with the nature and obvious
purpose of the statute, without further judicial construction.

58 Cal Jur 3d (2004), Statutes §117, p. 525-526. A statute is regarded as ambiguous if it is capable of two constructions, both of which are reasonable. Hughes v. Board of Architectural Examiners, supra, 17 Cal. 4th at p. 776.

Here, the statute is not ambiguous. It states that any waiver is unenforceable. There are no exceptions, qualifications or conditions. Unless the word "any" or the word "waiver" has more than one meaning, the Court may simply enforce the statute's plain meaning without further inquiry.

a) The word "any" is not ambiguous.

The word "any" means "one, no matter what one." Webster's Third New Int'l Dictionary (3rd ed. 1986). A synonym for "any" is "all". Id. Thus, the plain meaning of §1695.10 is that all waivers, no matter which ones or what types, are void and unenforceable as contrary to public policy.

Two Ninth Circuit cases illustrate the point. In U.S. Ex Rel Barajas v. U.S., 258 F. 3d 1004 (9th Cir. 2001), the Court needed to construe the phrase "any alternative remedy." After concluding that "the term 'any' is generally used to indicate lack of restrictions or limitations on the term modified", the Court held that the phrase was to be construed broadly and without conditions or exceptions. Id., at p. 1011. Similarly, in Turner v. McMahon, 830 F. 2d 1003 (9th Cir. 1987), the Court needed to construe a statute containing the phrase "any overpayment". In determining that the word "any" was extremely broad and allowed no exceptions, the Court held that the "use of the adjective 'any' indicates that Congress intended that overpayments must be recouped without restriction." Id., at p. 1007

Thus, use of the adjective "any" in §1695.10 indicates that the California legislature intended that waivers of the statutory protections under §1695 are void and unenforceable, without restriction. In other words, there can be no waivers of the provisions of §1695 et seq. that are enforceable under

1 California law. Any waiver is void. There are no exceptions. As the Ninth Circuit has noted with
 2 approval: “This broad language is not tempered or constricted by any limitation whatsoever.”
 3 (citation omitted)” Turner v. McMahon, *supra*, 830 R. 2d at p. 1007.

4 Hence, it does not matter who executed the waiver, under what circumstances the waiver was
 5 executed, or whether the person executing the waiver had the advice of counsel. It does not even
 6 matter that counsel advised against signing the waiver --- any waiver, even one made in the presence
 7 of a lawyer, a video camera and three nuns --- is void and unenforceable.

8
 9 **b) The word “waiver” is not ambiguous**

10 Generally, words which have acquired a particular meaning in law are to be so construed.
 11 Cal. Jur. 3d, Statutes, §141, p. 565. In particular, a word or phrase having a well-known and definite
 12 legal meaning will be construed to have the same meaning when used in a statute, unless it appears
 13 to have been used in a different sense. Id.

14 Black’s Law Dictionary (8th ed. 1990) defines “waiver” as “the voluntary relinquishment . . .
 15 of a legal right or advantage.” Under California law, “waiver” is legally defined as “the intentional
 16 relinquishment of a known right.” Richfield Oil v. Security-First Nat. Bank, 159 Cal. App. 2d 184,
 17 194 (1958). Lloyd has found no cases suggesting that the word has any other meaning when used as
 18 it is used in §1695.10. In other words, the unambiguous meaning of §1695.10 is that it makes void
 19 and unenforceable all “intentional relinquishments” of the rights afforded homeowners under §1695.

20 As set forth above, Hoffman’s many violations of §1695 gave Lloyd an absolute right to
 21 cancel the sale of his Residence. Hoffman’s sole defense is that Lloyd “intentionally relinquished”
 22 that right. Given the unambiguous language of §1695.10, such a defense simply does not exist as a
 23 matter of law. In short, defendants in a §1695 case can never raise as a defense the allegation that
 24 plaintiff intentionally relinquished such statutory protections.

Hoffman attempts to skirt the plain meaning of "waiver" by concocting a definition of his own. Citing no authority for this definition, he argues that the word "waiver" in §1695.10 means only "contractual waivers of §1695 protections at the time a home equity sales contract is entered." Hoffman's Trial Brief, P. 6:18-19. Hoffman concludes, again without any citation to authority, that §1695.10 therefore "does not preclude a party alleging a violation of the chapter and thereafter agreeing to settle and release claims arising thereunder." *Id.*, at p. 6:20-22. Hoffman calls the latter type of waiver a "post-transaction release" to distinguish it from a "contractual waiver". *Id.*, at p. 19.

Hoffman's argument is without merit. First, statutes using words or phrases having a settled common law meaning are not ambiguous merely because through a strained construction some ambiguity might arise. 58 Cal. Jur. 3d (2004), Statutes, §95, p. 489, citing Pacific Coast Dairy v. Police Court of City and County of San Francisco, 214 Cal. 668 (1932). Here, the term "waiver" has a settled common law meaning: it means the intentional relinquishment of a known right. The common law meaning is not limited to time or place. One can intentionally relinquish known rights at the time the rights arise, after the rights have been violated, or after suit is filed to vindicate the rights. Hoffman is suggesting a much more limited meaning. He is suggesting that the California legislature meant to limit the term "waiver" in §1695.10 to only those relinquishments that occur at the time the rights arise, i.e., at the time the defective contract is signed. Hoffman's interpretation is that once a defective contract is signed and the equity seller has a right to rescind the contract, any intentional relinquishment of that right is allowed because it is now a "post-transaction release", not a "waiver". Hoffman's Trial Brief, p. 6:17-18. In short, Hoffman's argues that a "release" is not a "waiver".

Such an interpretation of §1695.10 is truly strained and finds no support in either common usage or legal precedent. Black's Law Dictionary (8th ed 1990) defines a "release" as "[t]he

1 relinquishment . . . of a right, title or claim.” As noted above, this definition is almost identical to
 2 that of “waiver”, which is defined as “The voluntary relinquishment . . . of a legal right or advantage.
 3 Moreover, one California court has found no real distinction between the two concepts. Commerical
 4 Ins. Co. v. Copeland, 248 Cal. App. 2d 561, 565 (1967) [“It is thus evident that the legal effect of a
 5 release is also the relinquishment of rights; in this sense a release is clearly a waiver.”]. And the
 6 Seventh Circuit has also used the two concepts interchangeably. Fleming v. Warshawsky & Co.,
 7 123 Fed. 2d 622, 626 (7th Cir. 1941).

8
 9 In Fleming, the Department of Labor attempted to enforce a consent decree of restitution
 10 against an employer who had violated certain labor laws. The employer argued that because the
 11 affected employees had signed post-violation releases of the employer, the consent decree could no
 12 longer be enforced. In framing the question, the Court stated:

13
 14 We shall now consider defendants’ contention . . . that the defendants . . . had a
 15 *right to take releases* from their employees, or, to put the position another way,
 16 that the employees entitled to restitution had *a right to waive* the same so as to
 17 protect the defendants and relieve them from the obligation imposed by the Act
 and judgment.

18 Id., at p. 626 (emphasis supplied). In other words, “release” and “waiver” are merely two sides of
 19 the same coin. If an equity seller cannot waive the provisions of §1695, then certainly no equity
 20 purchaser can be released from complying with those same provisions.

21
 22 In sum, Hoffman’s feeble attempt to create an ambiguity where none exists should not
 23 distract this Court from the plain mandate of §1695.10. It prohibits any “relinquishments of known
 24 rights” arising under the provisions of 1695. As noted above, the legislature’s use of the word “any”
 25 means that all relinquishments are void, regardless of when they occur or the form they take. A
 26 relinquishment of rights “post-transaction” is no less void than a relinquishment of rights in the
 27
 28

1 defective contract itself. Therefore, Lloyd has an absolute right to cancel the sale of his Residence
2 and summary judgment should be entered accordingly.

3 2. §1695.10 Also Makes Any Release Void

4 Assuming, arguendo, that the Court finds some ambiguity in the language of §1695.10, it is
5 appropriately resolved by deferring to the only reported state court decision interpreting §1695.10.
6 Boquilon v. Beckwith, 49 Cal. App. 4th 1697. In Boquilon, the equity purchaser argued that the
7 equity sellers had signed a *post-transaction release*, the very type of release Hoffman argues
8 §1695.10 does not prohibit. Id., at p. 1709, fn. 12. Although the court determined that the signed
9 document did not constitute an intentional relinquishment by plaintiffs of any rights or claims they
10 held against the equity purchaser, the Court went on to hold that even if the document constituted a
11 waiver of their rights under §1695, such a waiver was void and unenforceable under the express
12 provision of §1695.10. In other words, the Court did not restrict the phrase “any waiver” in
13 §1695.10 to mean only those waivers given at or before the equity contract is signed, as Hoffman
14 urges this Court to do. To the contrary, the court in Boquilon applied §1695.10 to a *post-transaction*
15 *release* (to use Hoffman’s words).

16 As the only decision by a state court on an issue of state law, the Boquilon court’s holding
17 cannot be ignored. Yet that is precisely what Hoffman is urging this Court to do when he argues that
18 a “post-transaction release” is not barred by §1695.10. Lloyd respectfully submits that this court
19 should follow the Boquilon court’s reasoning and apply §1695.10 to the post-transaction release in
20 this case. For this reason alone, the Settlement should be declared unenforceable and Lloyd’s
21 motion for summary judgment should be granted.

3. §1695.10 Should Be Construed to Make the Settlement Unenforceable

In the event the Court remains doubtful about the meaning of §1695.10 and does not find the Boquilon decision controlling, the Court may apply settled rules of statutory interpretation to reach the same result.

a) **Lloyd's interpretation is consistent with the statute's stated policies**

The fundamental goal of statutory construction is to determine the legislature's intent.

Hughes v. Board of Architectural Examiners, *supra*, 17 Cal. 4th at p. 775. All other rules of statutory construction are subject to this controlling principle. 58 Cal. Jur. 3d (2004), Statutes, §91, p. 482. Therefore, when the legislature describes its intent in the statute to be interpreted, the Court is obligated to accept that description. Tyrone v. Kelly (1973) 9 Cal. 3d 1, 11.

Here, the legislature states the purpose and intent of §1695 to be, among other things:

To provide each homeowner with information necessary to make an informed and intelligent decision regarding the sale of his or her home to an equity purchaser. . . to prohibit or restrict unfair contract terms; to afford homeowners a reasonable and meaningful opportunity to rescind sales to equity purchasers [and] to preserve and protect home equities for the homeowners of this state.

Civ. Code §1695(d)(1). Moreover, the legislature specifically directs courts to construe the statute liberally to effect these purposes. Civ. Code §1695(d)(2).

Lloyd's interpretation of §1695.10 is that a victim of the specific predatory lending practices barred by §1695 can never be allowed to relinquish the protections of the statute. Hoffman's interpretation is that victims can relinquish their rights at any time after a transaction in violation of the statute has occurred. Even if the statute is susceptible of either interpretation, is there any doubt which interpretation will further the above legislative intent?

1 Hoffman's interpretation would allow equity purchasers, as Hoffman did here, to completely
2 ignore the law so long as they obtain a release of liability, and regardless of how the release is
3 obtained. Moreover, under Hoffman's interpretation, there is no requirement that the homeowner
4 even understand that he has rescission rights under §1695 before he waives them; merely a general
5 release, such as that contained in the Settlement, is sufficient under Hoffman's interpretation to
6 waive all statutory protections. Such an interpretation certainly does not afford the homeowner any
7 "opportunity to rescind sales to equity purchasers", much less a "reasonable and meaningful"
8 opportunity. Indeed, such an interpretation would allow homeowners to lose all of their equity
9 without ever being advised of their rescission rights. Nor does the enforcement of a post-transaction
10 release further the statute's goal of "preserv[ing] and protect[ing] home equities for the homeowners
11 of [California]. Allowing predatory lenders to take a homeowner's title in violation of the law and to
12 evict him if he refuses to sign a release is not likely to discourage the predatory practices that §1695
13 was intended to prevent. See, Civ. Code §1695(a) ("...homeowners in distress...are vulnerable to
14 the importunities of equity purchasers who induce homeowners to sell their homes for a small
15 fraction of their fair market values through the use of schemes which often involve oral and written
16 misrepresentations, deceit, intimidation and other unreasonable commercial practices"). The
17 legislature that expressed such concerns most certainly intended that all waivers of the statute's
18 protections --- whether pre- or post-transaction --- would be considered void and unenforceable by
19 the courts.

24 Lloyd's interpretation, on the other hand, is entirely consistent with the legislature's stated
25 intent. Lloyd's interpretation ensures that homeowners are actually informed of their rescission
26 rights, and have an actual opportunity to exercise them, before executing a release. After all, the
27 protections of the statute are fairly modest and easily provided: a five-day notice to cancel and a
28

1 right to rescind if the transaction until such notice is given and expires. Here, Hoffman could have
 2 provided that notice, waited five days, and then settled the dispute if Lloyd elected not to rescind.
 3 Alternatively, Hoffman could have allowed Lloyd to rescind without conditions, are required by Civ.
 4 Cide §1695(c). In either event, Hoffman would have complied with the law, and any subsequent
 5 release of claims would be enforceable. More importantly, the statute's stated goal of providing
 6 homeowners such as Lloyd with a "reasonable and meaningful" rescission right, as well as its goal
 7 of preserving such homeowners' equities, would be served, not thwarted.
 8

9
 10 It is well settled law that the interpretation of a statute should be consistent with and not
 11 antagonistic toward the purpose and intent of the legislation, with a view toward promoting rather
 12 than defeating the statute's general purpose. 58 Cal. Jur. 3d (2004), Statutes, §113, p. 516. Here,
 13 the enforcement of a post-transaction release would clearly defeat the statute's purpose and intent.
 14 On the other hand, Lloyd's interpretation of §1695 furthers the statute's stated purpose and the
 15 legislature's stated intent. On this ground alone, the statute must be construed as Lloyd suggests.
 16

17 **b) Hoffman's interpretation is inconsistent with §1695.16**

18 It is also settled law that legislative intent should be gathered from the whole act rather than
 19 from isolated parts or words. 58 Cal. Jur. 3d. (2004), Statutes, §119, p. 529. Further, all of the
 20 separate provisions of a statute should, whenever possible, be construed so as to harmonize the
 21 various parts or sections. *Id.*, §120, p. 531. Similarly, statutes should not be construed so as to
 22 render related provisions nugatory. *Id.*, at p. 531-532. A construction that makes sense of an
 23 apparent inconsistency is to be preferred to one that renders statutory language useless or
 24 meaningless. *Id.*
 25

26
 27 Hoffman argues that §1695.10 only precludes "contractual waivers", i.e., a waiver in the
 28 home equity sales contract itself. But Hoffman completely ignores that fact that a separate provision

1 of the Home Equity Sales Contracts Law specifically prohibits such "contractual waivers." That
 2 provision is §1695.16, which states:

3 "Any provision of a contract which attempts or purports to limit the liability of the equity
 4 purchaser under §1695.15 shall be void and shall at the option of the equity seller render the
 5 equity purchase contract void."

6 In short, §1695.16 by its express terms prohibits contractual releases. Therefore, completely
 7 different language in §1695.10 must mean something different. To harmonize §1695.16 with
 8 §1695.10, the court cannot construe the very different words in those statutes as meaning the same
 9 thing. Rather, the court should interpret §1695.16 as a prohibition of contractual releases and
 10 §1695.10 as a prohibition of any intentional relinquishment of a known rights, i.e., exactly the post-
 11 transaction release that Hoffman is attempting to enforce in this case. Such an interpretation
 12 harmonizes the statute's differently worded sections and does not, as Hoffman's interpretation,
 13 render one section surplusage.
 14

15
 16 **c) Only Lloyd's interpretation is consistent with other California law**

17 Under California law, laws designed to protect the public cannot be ignored or modified by
 18 private agreement. Cal. Civ. Code §3513 (laws established for a public reason cannot be
 19 contravened by private agreement). Examples of such laws are laws against usury and contracts
 20 with unlicensed persons. Because such laws were enacted to further a public policy, persons may
 21 not agree privately to waive those protections, even in otherwise enforceable settlement agreements.
 22 U.S. v. Northrop Corp. (9th Cir. 1995) 59 F. 3rd 953.

24 In the Northrop case, a litigant sued Northrop, alleging wrongful termination after he
 25 uncovered evidence that Northrop had "double charged" the U.S. Air Force. He settled the suit with
 26 a complete and general release of all claims. He then filed a second suit against Northrop under the
 27 *qui tam* provisions of the False Claims Act. The trial court ruled that the release was enforceable,
 28

1 but the Ninth Circuit reversed after finding that the release was unenforceable as a matter of public
 2 policy. Notably, the Court so ruled even though it found that the statute in question expressed no
 3 intent to make such releases enforceable or unenforceable. *Id.*, at p. 960. Rather, the Court applied
 4 “federal common law” to fill in a perceived “gap” in the statutory scheme. *Id.* In doing so, the
 5 Court rendered a thorough analysis, concluding that the purposes of the act would be thwarted by
 6 enforcing such releases. *Id.*, at pp. 960-969.

8 Here, no such analysis is necessary. The California legislature as expressly stated that any
 9 waivers of the statutory provisions are unenforceable “as contrary to the public policy”. Civ. Code
 10 §1695.10. Under settled law, this explicit expression of legislative intent means that Lloyd had no
 11 legal power to waive the protections of §1695. Rest.2d, Contracts §178(1) [“A promise or other
 12 term of an agreement is unenforceable on grounds of public policy if legislation provides that it is
 13 unenforceable”] and §179 [“A public policy against the enforcement of promises or other terms
 14 may be derived by the court from legislation relevant to such a policy....”]. Here, the California
 15 Legislature has specifically directed this court not to enforce “any waiver of the provisions of [1695
 16 et seq.]” More importantly, the Legislature has prohibited such enforcement as a matter of public
 17 policy. Accordingly, there can be no doubt that such waivers, even in a settlement agreement and
 18 with a general release, are void and unenforceable under the Northrop court’s holding.

22 Lloyd’s interpretation is also the only one that is consistent with the provisions of Civil Code
 23 §1607 and 1667. Civil Code §1607 provides that the consideration of a contract must be lawful
 24 within the meaning of Civil Code §1667. Consideration which is either contrary to the express
 25 provision of law, or contrary to the policy of express law, is not lawful. Kallen v. Delug (1984) 157
 26 Cal.App.3d 940. This principle was applied to void otherwise valid releases of employment claims
 27 in Fleming v. Warshawsky & Co., *supra*, 123 F. 2d. 622, 626. After noting that it did not matter
 28

1 whether the releases were voluntary and uncoerced, the Court held that the employees had no right
 2 to bargain away rights that were protected as a matter of public policy. That is precisely the case at
 3 bar. Because Lloyd's rights under §1695 have been created to further public policy and promote the
 4 public welfare (Civ. Code §1695(c)), no private agreement can release them.

5
 6 Here, the only consideration Lloyd gave under the Settlement Agreement was to release his
 7 valuable claims against Hoffman. Even if such a release is not contrary to the express provisions of
 8 Civil Code §1695.10, it is clearly contrary to the policy of express law, as set forth in §1695 et seq.
 9 Otherwise, any home equity purchaser could do indirectly what the law prohibits him from doing
 10 directly. Instead of preparing the purchase contract in conformity with §1695 et seq and giving the
 11 homeowner the right of rescission, the home equity purchaser could simply prepare a "Settlement
 12 Agreement and Release" at the first sign of any trouble. Given the Legislature's findings in §1695,
 13 it would not be long before every predatory lender in California prepared forms that would enable
 14 them to "two-step" dance around the Home Equity Sales Contract law. Such an obvious loophole
 15 cannot have been intended by the Legislature.

16
 17
 18 4. Civil Code §1542 Does not Trump Civil Code §1695.10

19 Hoffman has suggested that Lloyd's interpretation of §1695.10 is inconsistent with, and
 20 therefore overridden by, the general release authority under Civil Code §1542. Of course, any
 21 superficial inconsistency is easily resolved by applying the usual rule of statutory construction in
 22 which the specific statute takes priority over a more general provision. Here, such a rule of statutory
 23 construction would allow releases of unknown claims except claims arising under statutory
 24 provisions that the Legislature has expressly declared to be unwaivable, such as Civil Code
 25 §1695.10. But a more fatal flaw to Hoffman's argument is that it assumes a false choice: if all
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1 claims arising under Civil Code §1695 et seq. are not releasable, then every §1695 case must go to
2 trial because the claims can never be settled.

3 Lloyd is not saying that §1695 claims can never be settled. Indeed, here is how Hoffman
4 could have settled with Lloyd and obtained a valid and enforceable release:
5

6 "Mr. Lloyd, I have determined that our arrangement is in violation of §1695 and
7 so I hereby deliver to you my grant deed without condition or demand. Of course,
8 you owe me the money I lent you to pay off your creditors, and if you cannot
9 repay me I intend to commence foreclosure proceedings. If, after consulting with
10 counsel you wish to proceed with our arrangement anyway, I am willing to
11 document it correctly this time to make sure that it complies with state law."

12 Instead, Hoffman ignored the law, refused to acknowledge the law's requirements, and retained all
13 the economic power that came with legal title. Rather than solve a problem of his own making, he is
14 now asking this Court to solve it for him by twisting the Legislature's words and ignoring its clear
15 intent. The Court should decline to do so.

16 DATED: January 27, 2006

Goodrich & Associates

17 /s/
18 Jeffrey Goodrich
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DOCUMENT 22

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Attorneys for Debtor and
 Debtor in Possession

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

In re:

THOMAS LLOYD,
 Debtor

JEFFREY E. HOFFMAN,
 Plaintiff,

v.

THOMAS R. LLOYD, an individual, EDWARD
 L. BLUM, an individual, and DOES 1 through
 20, inclusive,

Defendants

AND RELATED CROSS-ACTION,

Cross-Defendants

CHAPTER 11

Case No. Case No. 04-32921-TEC

Adv. No. 05-03328

REPLY MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 DEFENDANT THOMAS LLOYD'S
 MOTION FOR SUMMARY JUDGMENT

DATE: April 28, 2006

TIME: 9:30 a.m.

COURT: 23rd Floor, 235 Pine Street, S.F.

REPLY MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF MOTION
 FOR SUMMARY JUDGMENT

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28INTRODUCTION

The Debtor, Thomas Lloyd ("Lloyd"), first raised claims under Civil Code §1695 in October 2004 by recording and serving Jeffrey Hoffman ("Hoffman") with a Notice of Rescission. See, Hoffman's Complaint herein, Exhibit C. Soon thereafter, Hoffman hired an attorney, Stephen Pahl, who had prior experience with the provisions of §1695 in an unrelated case before this Court. See, Transcript of Hearing on Plaintiff's Motion to Cancel Notice of Rescission ("Transcript"), filed herein January 15, 2006, p. 4:14-20.

The Court can therefore safely assume that Hoffman long ago understood the importance of showing compliance with the notice provisions of §1695. Yet as recently as last August, in response to Lloyd's claims under §1695, Mr. Pahl represented to this Court that his client had no knowledge of the provisions of §1695 at the time he purchased Lloyd's home. Transcript, p. 6:7-13, p. 11:13 to p. 12:11.

Now, in response to Lloyd's motion for summary judgment, Mr. Pahl's client has miraculously produced a document to show that he not only knew about §1695, but that he substantially complied with all of its provisions. Given Mr. Pahl's previous representations and the suspicious appearance of Mr. Lloyd's alleged signature (it crosses no printing or lines on the document, thus suggesting that the signature was "cut and pasted" on the document), the document is probably a forgery. Even if the document is what Mr. Hoffman claims it is, to wit, a Notice of Cancellation that he provided to Lloyd as part of the purchase, then how could Mr. Pahl be so mistaken about such a key issue five months into the case? Did Hoffman conceal the document from his attorney until after August? Or is the document a crude forgery by Hoffman in a desperate attempt to prove compliance after his first gambit, the Settlement Agreement, failed?

Lloyd is quite eager to present these questions to the court at the punitive damages phase in this case. But the questions need not be answered now to establish Hoffman's liability as a matter of law because the document does not raise a genuine issue of material fact. First, the document is inadmissible under Rule 901 of the Federal Rules of Evidence. Second, even if the document is admissible evidence, it does not contradict Lloyd's evidence that Hoffman violated §1695.2, §1695.3 and §1695.5(a). Accordingly, Lloyd's motion must be granted.

II.

STATEMENT OF FACTS

Before the Court can determine the admissibility of the Notice of Cancellation (Exhibit C to the Declaration of Jeffrey E. Hoffman in Support of Plaintiff's Opposition to Defendant Lloyd's Motion for Summary Judgment ("Hoffman Declaration")), it must consider the following facts that Hoffman has admitted under oath:

1. In November 2004, Lloyd demanded in writing that Hoffman produce at Hoffman's deposition the original of the Notice of Cancellation. Declaration of Jeffrey Goodrich in Reply to Plaintiff's Opposition to Thomas Lloyd's Motion for Summary Judgment ("Goodrich Dec."), ¶2, Exhibit A.
2. Hoffman admitted under oath that he does not have the original Notice of Cancellation, only a copy. Goodrich Dec, ¶4, Exhibit B, p. 4-24:6-10.
3. Hoffman admitted under oath that he did not see Lloyd sign the Notice of Cancellation (*Id.* ¶5, Exhibit B at p. 4-24:11-12), nor does he know who was present when Lloyd allegedly signed it *Id.*, ¶5, Exhibit B at p. 5-43:9-13.
4. Hoffman admitted under oath that he did not recognize the handwritten notations on the Notice of Cancellation. *Id.* ¶6, Exhibit B at p. 5-43:5-7.

- 1 5. Hoffman produced his copy of the Notice of Cancellation as a separate document
- 2 unattached to any other document (Goodrich Dec., ¶7)
- 3
- 4 6. Hoffman admitted under oath that he had no personal knowledge of whether the
- 5 Notice of Cancellation was attached to anything. Id., ¶8, Exhibit B at p. 6-38:17-23.
- 6 7. Hoffman has admitted under oath that he did not know Lloyd prior to the subject
- 7 transaction. Id., ¶9, Exhibit B p. 6-39 to 6-40.
- 8 8. Hoffman has admitted under oath that the Notice of Cancellation was not attached to
- 9 the Purchase Contract, Option Agreement or Lease. See, Hoffman's Proof of Claim
- 10 filed herein February 11, 2005, as Claim No. 6 and admitted into evidence at trial
- 11 (Phase I) in this Adversary Proceeding, p.18.2, lines18-22 ("A true and correct copy
- 12 of the PRDS Real Estate Purchase Contract with all amendments and addenda thereto
- 13 between Creditor Jeffrey Hoffman and Debtor is attached hereto as Exhibit "A" and
- 14 is incorporated herein by reference...." (Emphasis supplied). The contract Hoffman
- 15 attached to his Proof of Claim does not include the Notice of Cancellation.
- 16
- 17

18 III.

19 ARGUMENT

20 A. Hoffman Must Submit Admissible Evidence in Opposition to Lloyd's Motion.

21 Hoffman does not deny that Lloyd's motion for summary judgment is adequately supported

22 by admissible evidence establishing Hoffman's violations of Civil Code §§1695.2, 1695.3 and

23 1695.5(a). Accordingly, the following provision of Federal Rule of Civil Procedure 56(e) applies:

24 When a motion for summary judgment is made and supported as provided in this

25 rule, an adverse party may not rest upon the mere allegations or denials of the

26 adverse party's pleading, but the adverse party's response, by affidavits or as

27 otherwise provided in this rule, must set forth specific facts showing that there is a

28 genuine issue for trial. If the adverse party does not so respond, summary

 judgment, if appropriate, shall be entered against the adverse party.

1 Rule 56(e), Fed. Rules Civ. Proc. Moreover, the adverse party to a motion for summary judgment
 2 cannot withhold evidence until trial (Walker v. Hoffman (9th Cir. 1978) 583 F.2d 1073, 1075) and
 3 cannot demand a trial because of the speculative possibility that a material issue of fact may appear
 4 at that time. 10B Wright & Miller, Federal Practice and Procedure, §2739, p. 388-389.
 5

6 When declarations are used to oppose a motion for summary judgment, such declarations
 7 "shall set forth such facts as would be admissible in evidence." Rule 56(e), Fed. Rules of Civ. Proc.
 8 This means that the information contained in the declarations, as opposed to the declarations
 9 themselves, must be of a type that would be admissible at trial. Coca-Cola co. v. Overland, Inc. (9th
 10 Cir. 1982), 692 F.2d 1250, 1255. The declarations should follow substantially the same form as
 11 though the declarant were giving testimony in court. For example, an unauthenticated document
 12 attached as an exhibit cannot be used to support or oppose a motion for summary judgment. Orr v.
 13 Bank of America N.T. & S.A., (9th Cir. 2002) 285 F.3d 764, 773. Similarly, self-serving statements
 14 in a party's brief are not evidence admissible to defeat a motion for summary judgment. Smith v.
 15 Mack Trucks, Inc. (9th Cir. 1974) 505 F.2d 1248, 1249. Nor is parole evidence admissible to create
 16 an issue of fact. Harris v. Siegel (D.C.Fla. 1977) 438 F.Supp. 510, 512.
 17

18 Most importantly, the evidence offered must be based upon the declarant's personal
 19 knowledge. Urbina v. Gilfilen (9th Cir. 1969) 411 F.2d 546, 547-548. Conclusory statements not
 20 based upon personal knowledge are insufficient to avoid summary judgment. Where the record
 21 discloses that a declarant has no personal knowledge of a fact set forth in his declaration, his general
 22 statement that he is familiar with the matters stated in the declaration will be treated as argument, not
 23 evidence of competence. Johns Hopkins Univ. v. Hutton (D.C.Md. 1968) 297 F.Supp. 1165, 1207-
 24 1208 n. 24, affirmed in part, reversed in part on other grounds, (4th Cir. 1970) 422 F.2d 1124.
 25
 26
 27
 28

1 Based upon the forgoing, and for the reasons set forth in greater detail below, Lloyd hereby
 2 objects to the admissibility of the Notice of Cancellation and moves to strike paragraph 5 in its
 3 entirety from the Hoffman Declaration.

4
 5 **B. Hoffman's Failure to Authenticate the Notice Makes it Inadmissible.**

6 The Notice of Cancellation is not self-authenticating under Rule 902 of the Federal Rules of
 7 Evidence. Therefore, Hoffman was required to submit evidence that the Notice is what it purports to
 8 be, i.e., a document signed by Thomas Lloyd. A document is authenticated under Rule 901(b)(1) of
 9 the Federal Rules of Evidence by a witness who wrote it, signed it, used it or saw others do so. Orr
 10 v. Bank of America N.T. & S.A., supra, 285 F.3d at p. 774, n.8. Because Hoffman failed to submit
 11 such evidence, the Notice is not admissible to show that Hoffman complied with the relevant
 12 provisions of §1695.

13
 14 Hoffman admits that he did not see Lloyd sign the Notice and does not know who witnessed
 15 Lloyd's signature. Nor can he identify the handwritten notations on the Notice. Notably, he does
 16 not testify that he delivered the Notice to Lloyd or that Lloyd received the Notice. Rather, he merely
 17 states that "the Purchase included a Notice of Cancellation" and that "a true and correct copy of the
 18 Notice of Cancellation is attached . . . as Exhibit C [to Hoffman's Declaration]." Hoffman
 19 Declaration, p. 2:18-19. The Court should take particular notice of Hoffman's parsing of the term
 20 "Purchase Contract". Although he states that the "Purchase Contract" included the Option and the
 21 Lease, he carefully avoids that allegation when testifying about the Notice. He testifies that the
 22 Notice was a part of the "Purchase", not that it was part of the "Purchase Contract."

23
 24 As a matter of law, Hoffman's declaration does not raise a genuine issue of fact. Unless
 25 Hoffman submits admissible evidence that Lloyd received the Notice, there is no evidence that
 26 Hoffman ever provided Lloyd any of the information required by the provisions of §§1695.2, 1695.3
 27
 28

1 or 1695.5(a). Hoffman could have raised a factual issue by submitting evidence that Lloyd either
 2 signed the Notice or received it. Here, Hoffman has done neither. He did not witness Lloyd's
 3 purported signature, and does not even know who did; therefore, he does not know whether Lloyd
 4 signed the Notice. Nor does he testify from personal knowledge that Lloyd received the Notice. His
 5 conclusory statement that the Notice was "part of the Purchase" is an ultimate fact and is
 6 inadmissible argument. See, Bsharah v. Eltra Corp. (6th Cir. 1968) 394 F2d 502. And his statement
 7 that the Notice was kept in the ordinary course of his business is not only conclusory but also
 8 entirely irrelevant, since the Notice is only relevant if it was delivered to Lloyd.
 9

10
 11 Hoffman's failure to authenticate the Notice is no mere oversight. Rather, he purposely
 12 avoided testifying that the Notice was part of the Purchase Contract. This is because he has already
 13 sworn in writing under oath that the Purchase Contract (Exhibit A) did not include the Notice as an
 14 attachment or addendum (See, Hoffman's Proof of Claim, Trial Exhibit 18, p. 18.2:18-21 and
 15 Exhibit "A" thereto). He also produced the Purchase Contract in pretrial discovery without the
 16 Notice of Cancellation attached. Goodrich Dec, ¶7. Thus, he testifies that the Notice was part of the
 17 "Purchase" without further explaining what that capitalized term means. Such a transparent ruse
 18 certainly raises no genuine issue of fact.
 19

20
 21 **C. The Notice Fails to Raise a Genuine Issue of Material Fact.**

22 Even if the Court denies Lloyd's motion to strike the Notice as inadmissible, the Notice does
 23 not raise a genuine issue of material fact. At best, the Notice suggests that Lloyd at some point
 24 signed the Notice, thereby acknowledging its receipt. There is still no evidence that the Notice was
 25 ever attached to the Purchase Contract as required by §1695.5(b) or that Hoffman ever provided
 26 Lloyd with "a copy of the contract and the attached Notice of Cancellation." More importantly,
 27 Hoffman's testimony fails to rebut Lloyd's evidence, now uncontroverted, that Hoffman violated the
 28

1 provisions of §1695.2 (the Purchase Agreement, Option and Lease are not in 10 point bold type),
2 §1695.3(h) (the Purchase Agreement does not contain the specified notice of cancellation rights), or
3 §1695.5(a), which requires that the contract contain in immediate proximity to the space reserved for
4 Lloyd's signature the following statement in 12-point bold type:
5

6 "You may cancel this contract for the sale of your house without any penalty or
7 obligation at any time before [insert date and time rescission right ends]. See
8 attached notice of cancellation form for an explanation of this right."

9 Hoffman's contract, as opposed to the separate and unattached Notice, contains no such statement.
10 Again, it fails to disclose any information whatsoever about Lloyd's rescission rights under §1695.
11 Accordingly, §1695.5(d) allows Lloyd, as a matter of law, to cancel the contract.

12 Hoffman tries to avoid this result by suggesting that the Notice should be considered part of
13 the purchase contract. His argument appears to be this: if the Notice is part of the "contract", then
14 the "contract" contained substantially all the required notices, albeit in the wrong places, with the
15 wrong language and in the wrong font.
16

17 This argument, however, is entirely without merit. Civil Code §1695.1(e) defines "contract"
18 as any offer or any contract, agreement, or arrangement, or any term thereof, between an equity
19 purchaser and equity seller incident to the sale of a residence in foreclosure. A review of the Notice
20 reveals that it is not an offer, a contract, an agreement or an arrangement between Hoffman and
21 Lloyd. Nor is it a term of an offer, contract, agreement or arrangement between Hoffman and Lloyd.
22 Rather, it is a statutorily required notice of Lloyd's rights, together with a form and instructions with
23 which Lloyd may exercise those rights.
24

25 Any doubt about Hoffman's argument is laid to rest by the language of §1695.5(c), which
26 required Hoffman to provide Lloyd with "a copy of the contract **and** the attached notice of
27 cancellation." (emphasis supplied). Obviously, if the Legislature intended that the term "contract"
28

1 includes the notice of cancellation, it would not have identified them as two distinct documents.
 2 Similarly, §1695.5(b) requires that "the contract shall be accompanied by [the notice of
 3 cancellation]" and that "[the notice of cancellation] shall be attached to the contract." Clearly, the
 4 Legislature intended that the term "contract" does **not** include the notice of cancellation.
 5

6 Finally, the Legislature made clear that the **required notices must appear both in the**
 7 **contract and in the attached notice of cancellation.** §1695.3 requires that every contract contain a
 8 notice of cancellation as provided in §1695.5(b) (i.e., as an attachment) **and** a separate, in-contract
 9 notice in 14-point bold type. Compare, §1695.3(g) and (h). The notice required by subdivision (g)
 10 need only be in 12-point bold type and shall be attached to the contract pursuant to §1695.5(b). The
 11 notice required by subdivision (h), on the other hand, must be in 14-point boldface type and appear
 12 immediately above the statement required by §1695.5(a) (which, in turn, must be in the contract, not
 13 in the attachment, and be in "immediate proximity" to the equity seller's signature§1695.3). Again,
 14 Hoffman admits this was not done.
 15

16
 17 In sum, because the contract between Hoffman and Lloyd, by Hoffman's own admission, did
 18 not contain any of the required notices "in immediate proximity to the space reserved for [Lloyd's
 19 signature], was not prepared by Hoffman in 10 point bold type, and failed to include the notice
 20 specified by 1695.3(h), Lloyd may rescind the contract even if he received the Notice of
 21 Cancellation. Accordingly, Lloyd's Motion for Summary Judgment should be granted.
 22

23 **1. §1695 Does Not Allow For Substantial Compliance.**

24 Civil Code §1695.6 requires that the contract "as required by Sections 1695.2, 1695.3 and
 25 1695.5 shall be provided and completed in conformity with those sections by the equity purchaser."
 26 The law requires conformity, not substantial compliance. As this Court has already determined, the
 27 Home Equity Sales Contract Act ("Act") is important consumer protection legislation which must be
 28

1 liberally construed to effectuate its stated purposes. The stated purposes include providing the
2 homeowner with information necessary to make an informed and intelligent decision, to safeguard
3 the public against deceit, and to afford homeowners a reasonable and meaningful opportunity to
4 rescind sales covered by the Act. §1695(d)(1). The Act specifically targets predatory lending tactics
5 such as oral and written misrepresentations, deceit and other unreasonable commercial practices.
6 §1695(a). Allowing an equity purchaser such as Hoffman to place all required disclosures and
7 notices in a separate, unattached document, could not possibly protect consumers from the predatory
8 lending tactics the Legislature describes in §1695(a), nor further the legislative intent expressed in
9 §1695(d). In fact, allowing the delivery of such an unattached document to satisfy the specific and
10 detailed notice requirements under §1695 would subvert the statute's purpose.
11

12
13 As just one example of the mischief Hoffman's interpretation could cause, an equity
14 purchaser could induce a homeowner to sign a purchase agreement without any of the required
15 notices. Then, at the close of escrow, when a blizzard of papers are customarily dumped upon the
16 distressed seller in a title company office on the eve of a trustee's sale, the equity purchaser slips the
17 required "notice" into the pile as a separate document. The Legislature's findings in §1695(a)
18 suggest that the distressed seller would likely sign such a "notice" without hesitation or thought. But
19 even if the seller reads and understands the notice before acknowledging it, he is no longer in a
20 position to exercise his rights. The trustee's sale is the next day, the escrow officer is saying that
21 there is no more time, and the homeowner has no opportunity to have the documents reviewed by
22 knowledgeable counsel. Obviously, such disclosure would not constitute "substantial compliance."
23

24
25 Hoffman may counter such concerns by suggesting that a separate notice is "substantial
26 compliance" only when it is attached to the contract at the time the seller signs the contract. But that
27 is not this case. **Hoffman has submitted no evidence whatsoever that the notice was ever**
28

1 attached to the contract, much less at the time Lloyd signed the contract. Although Hoffman's
 2 counsel in his Memorandum asserts that the Notice was signed by Lloyd on the same day as the
 3 other documents (Plaintiff's Memorandum, p. 4:21-22) and that the Notice was attached to the
 4 contract (Id., p. 6:26), Hoffman has submitted no evidence to support such allegations. To the
 5 contrary, Hoffman admits under oath in his Proof of Claim, again under oath in his document
 6 response, and a third time in his Declaration in opposition to Lloyd's motion, that the notice was not
 7 attached to the contract. Moreover, as there is no date next to Lloyd's alleged signature, the Court
 8 cannot even reasonably infer that it was signed at the same time as the other documents.
 9 Accordingly, Hoffman is arguing that a separate notice, whether or not attached and whether or not
 10 signed at the time the purchase contract is signed, "substantially complies" with §1695 et seq. The
 11 argument is without merit.

12 2. Hoffman Did Not Substantially Comply With §1695.

13 Even assuming that something less than exact compliance could absolve an equity purchaser
 14 from liability under §1695, Hoffman's alleged compliance falls far short of any reasonable standard.
 15 First, the contract contains none of the required disclosures and fails to follow any of the statute's
 16 explicit requirements for font size. Second, the contract does not include an attached Notice of
 17 Cancellation. In short, the contract does not conform to the requirements of §1695.2, 1695.3 and
 18 1695.5 in any material way. Accordingly, Lloyd's motion should be granted.

19 DATED: April 21, 2006

Goodrich & Associates

20 /s/ _____
 21 Jeffrey Goodrich

DOCUMENT 23

Jeffrey J. Goodrich (SBN 107577)
 GOODRICH & ASSOCIATES
 336 Bon Air Center, Suite 335
 Greenbrae, CA 94904
 (415) 925-8630 VOICE
 (415) 925-9242 FAX

Attorneys for Debtor and
 Debtor in Possession

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

In re:

THOMAS LLOYD,
 Debtor

JEFFREY E. HOFFMAN,
 Plaintiff,

v.

THOMAS R. LLOYD, an individual, EDWARD
 L. BLUM, an individual, and DOES 1 through
 20, inclusive,

Defendants

AND RELATED CROSS-ACTION,

Cross-Defendants

CHAPTER 11

Case No. Case No. 04-32921-TEC

Adv. No. 05-03328

DECLARATION OF JEFFREY GOODRICH
 IN REPLY TO PLAINTIFF'S OPPOSITION
 TO DEFENDANT THOMAS LLOYD'S
 MOTION FOR SUMMARY JUDGMENT

[WITH EXHIBITS]

DATE: April 28, 2006

TIME: 9:30 a.m.

COURT: 23rd Floor, 235 Pine Street, S.F.

DECLARATION OF JEFFREY GOODRICH IN
 REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT
 THOMAS LLOYD'S MOTION FOR SUMMARY JUDGMENT

1 I, Jeffrey J. Goodrich, declare:

2 1. I have personal knowledge of the facts set forth in this declaration, except as to
3 matters stated upon information and belief, and as to those matters I believe my information to be
4 true. If called as a witness, I could competently testify to the facts set forth herein.

5 2. On December 1, 2005, I caused to be served upon Plaintiff's counsel in this
6 Adversary Proceeding an Amended Notice of Deposition of Jeffrey E. Hoffman, a true and correct
7 copy of which is attached hereto as Exhibit "A" and made a part hereof. In that Notice, I demanded
8 that Mr. Hoffman produce an original of the Notice of Cancellation that he has submitted as Exhibit
9 "C" to his Declaration in opposition to Thomas Lloyd's Motion for Summary Judgment in this
10 Adversary Proceeding.

11 3. On December 7, 2005, I took Mr. Hoffman's deposition in Gilroy, California.
12 Attached hereto as Exhibit "B" and made a part hereof, is a true and correct copy of excerpts of the
13 reporter's transcript of Mr. Hoffman's deposition. The original of the entire transcript, together with
14 the reporter's Certification, is in the possession of the Court after Mr. Hoffman's counsel requested
15 that it be so lodged with the Court at Phase I of the trial in this Proceeding.

16 4. In his deposition, Mr. Hoffman admitted that he does not have the original Notice of
17 Cancellation, only a copy. See, Exhibit B hereto, p. 4-24:6-10.

18 5. In his deposition, Mr. Hoffman admitted that he did not see Lloyd sign the Notice of
19 Cancellation, nor does he know who was present when Lloyd allegedly signed it. See, Exhibit B, p.
20 4-24:11-12 and p. 5-43:9-13.

21 6. In his deposition, Mr. Hoffman admitted that he did not recognize the handwritten
22 notations on the Notice of Cancellation. See, Exhibit B, p. 5-43:5-7.

23 7. Prior to his deposition and in response to my written Request for Production of
24 Documents, Set One, Mr. Hoffman provided a written response, a true and correct copy of which is
25 attached hereto as Exhibit "C" and made a part hereof. In his verified responses to Requests Nos. 1
26 and 2, Mr. Hoffman agreed to produce all documents in his possession, custody or control that
27 referred to, related to, or concerned his ownership of the Elizabeth Street Property (including any
28 purchase and sale agreements) or referred to, related to or concerned the transaction with Lloyd

DECLARATION OF JEFFREY GOODRICH IN
REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT
THOMAS LLOYD'S MOTION FOR SUMMARY JUDGMENT

1 whereby he acquired title to the Elizabeth Street Property. Notwithstanding that verified response,
2 the documents I received from Mr. Hoffman in response to my Request for Production of
3 Documents did not include a copy of the PRDS Real Estate Purchase Contract that Mr. Hoffman has
4 identified in his Declaration as Exhibit "A". He did, however, produce a copy of the Notice of
5 Cancellation that he has attached as Exhibit C to his declaration. The copy I received from Mr.
6 Hoffman was not attached to any other document.

7 8. In his deposition, Mr. Hoffman admitted that he had no personal knowledge of
8 whether the Notice of Cancellation was attached to anything. See, Exhibit "B", p. 6-38:17-23.

9 9. In his deposition, Mr. Hoffman admitted that he did not know Lloyd prior to the
10 subject transaction. See, Exhibit "B", p. 6-39 to 6-40.

11 I declare under penalty of perjury under the laws of the State of California that this
12 declaration is true and correct and that it was executed on April 21, 2006, at Greenbrae, California.

13 DATED: April 21, 2206

14
15 /s/ Jeffrey J. Goodrich
16 Jeffrey J. Goodrich
17
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28

Jeffrey J. Goodrich (SBN 107577)
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Attorneys for Debtor and
Debtor in Possession

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CHAPTER 11

In re:

Case No. Case No. 04-32921-TEC

THOMAS LLOYD,

Debtor

JEFFREY E. HOFFMAN,

Plaintiff,

THOMAS LLOYD, et al,

Defendants

AND RELATED CROSS-ACTION

Adv. No. 05-03328

AMENDED NOTICE OF DEPOSITION OF
JEFFREY E. HOFFMAN

TO ALL PARTIES HEREIN AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on December 7, 2005, pursuant to Rules 7030 and 7032 of the Federal Rules of Bankruptcy Procedure and the stipulation of the parties herein, Defendant Thomas Lloyd ("Defendant"), through his attorney of record, will take the deposition of Jeffrey E. Hoffman by oral examination before a notary public or any other person authorized to administer oaths. Said

AMENDED NOTICE OF DEPOSITION

1 deposition shall commence at 9:00 a.m. at the Hilton Garden Inn, 6070 Monterey Road, Gilroy, CA
2 95020, and continue day to day, Sundays and holidays excepted, until completed.

3 PLEASE TAKE FURTHER NOTICE that Defendant hereby demands that deponent bring to
4 said deposition the ORIGINAL of the attached document recently produced by deponent as
5 document number JH-137.

6 Dated: December 1, 2005

Goodrich & Associates

7
8 /s/ Jeffrey Goodrich
9 Jeffrey Goodrich

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AMENDED NOTICE OF DEPOSITION

PROOF OF SERVICE BY MAIL

I, Jeffrey J. Goodrich, declare:

1. I am over the age of eighteen years and am not a party to the within action. My business address is 350 Bon Air Center, Suite 220, and my mailing address is 336 Bon Air Center, #335, Greenbrae, California 94904.
2. On December 1, 2005, I caused to be served the pleading entitled AMENDED NOTICE OF DEPOSITION OF JEFFREY E. HOFFMAN on the following persons by United States mail, postage prepaid:

PLAINTIFF AND ALL CROSS-DEFENDANTS:

Stephen D. Pahl, Esq.
160 West Santa Clara Street
Fourteenth Floor
San Jose, CA 95113-1700

DEFENDANT EDWARD L. BLUM:

Jerry R. Hauser, Esq.
Phillips, Greenberg & Hauser, LLP
Four Embarcadero Center, 39th Floor
San Francisco, CA 94111

On the same day, I also faxed a complete copy to Stephen D. Pahl at (408) 286-5722 and emailed a pdf file to spahl@pahl-gosselin.com. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

December 1, 2005

/s/ Jeffrey J. Goodrich
Jeffrey J. Goodrich

AMENDED NOTICE OF DEPOSITION

NOTICE RECEIVED BY CALIFORNIA LAW

UNDER YOUR RIGHT TO CANCEL THIS CONTRACT HAS
BEEN ABOLISHED BY THE CALIFORNIA REALTORS' ASSOCIATION
AND THE CALIFORNIA REALTORS' ASSOCIATION CANNOT ASK YOU TO SIGN OR HAVE
YOU SIGN ANY DEED OR ANY OTHER DOCUMENT.

NOTICE OF CANCELLATION

DATE: May 28, 2003

YOU MAY CANCEL THIS CONTRACT FOR THE SALE OF A LOT OF LAND
WITHOUT PENALTY OR OBLIGATION AT ANY TIME

BEFORE 6-7-03 TIME 12:00 A.M.

Seller has the right to cancel until the 5th business day following the day on
which Seller signs contract. "Business Day" means any day except Sunday, holidays or
until 8:00 A.M. on day of forced sale rule, whichever occurs first.

TO CANCEL THIS TRANSACTION, PERSONALLY DELIVER A SIGNED AND
DATED COPY OF THIS CANCELLATION NOTICE OR SEND BY TELEGRAM TO

BUYER Tell Hoffman ADDRESS 5124 S. Palm Ave # 103Glendale, CA 91204NOT LATER THAN: DATE 6-7-03 TIME 12:00 P.M.

I HEREBY CANCEL THIS TRANSACTION

Seller _____ Date _____

Seller _____ Date _____

I HAVE RECEIVED THIS NOTICE TO CANCEL

Buyer _____ Date _____

Thomas A. Fiedel

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A-4

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE

THOMAS LLOYD,

Debtor.

CASE NO. 04-32 921TEC

AND RELATED CROSS-ACTIONS.

DEPOSITION OF JEFF HOFFMAN
Volume 1 (Page 1 - 122)

Date: December 7, 2005
Time: 9:00 a.m.
Location: 375 Leavesley Road
Gilroy, California
Reported by: JAN SERRA
CSR # 8207

7689
19992

Bell & Myers

CERTIFIED SHORTHAND REPORTING, INC.

50 AIRPORT PARKWAY, SUITE 205, SAN JOSE, CALIFORNIA 95110, TELEPHONE (408) 287-7500, FAX (408) 294-1211

EXHIBIT B-1
Plaintiff's EOR-493

JEFF HOFFMAN, VOLUME I

DECEMBER 7, 2005

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE
THOMAS LLOYD,
Debtor

CASE NO. 04-32921EC

Volume I

AND RELATED CROSS-ACTIONS. (Page 1 - 122)

DEPOSITION OF JEFF HOFFMAN

Date: December 7, 2005
Time: 9:00 a.m.
Location: 175 Leavessley Road
Gilroy, California

Reported by: JAN SERRA
CSR # 8207

APPEARANCES

For the Debtor: CECILIA A. STANLEY
BY: JERRY R. HANSEN, Esq.
Edison Avenue
Suite 133
Menlo Park, California 94025
(415) 325-8570

For the Witness: BELL & MYERS, INC.
BY: STEPHEN D. PAIR, Esq.
150 West Van Ness Street
Fourth Floor
San Francisco, California 94111
(415) 398-5100

For the Defendant PHILLIPS, EDWARD & HADSPER, LLP
Mr. Blum: BY: JERRY R. HANSEN, Esq.
11 Lombard Street
38th Floor
San Francisco, California 94111
(415) 398-5700

The Reporter: BELL & MYERS, INC.
BY: JAN SERRA,
CSR # 8207
P.O. Box 200
San Jose, California 95110
(408) 287-7500

Also Present: Tom Lloyd

INDEX OF EXAMINATIONS

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By Mr. Goodrich 5

--of--

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BELL & MYERS, CERTIFIED SHORTHAND REPORTER, INC. (408) 287-7500

B-2
Plaintiff's EOR-494

JEFF HOFFMAN, VOLUME I

DECEMBER 7, 2005

1 JEFF HOFFMAN,
2 called as a witness, after having been first duly
3 affirmed by the Certified Shorthand Reporter to tell
4 the truth, the whole truth, and nothing but the truth,
5 testified as follows.

EXAMINATION BY MR. GOODRICH

6 Q Mr. Hoffman, we just met this morning; you've
7 not met me before?

8 A That's correct.

9 Q Have you had your deposition taken before?

10 A Yes.

11 Q How many occasions?

12 A I don't know how many.

13 Q More than ten?

14 A More than ten.

15 Q Let me just briefly go through the
16 admonitions since you've got some experience.

17 I'm going to ask you questions, and you're
18 going to provide answers, so wait until the question is
19 done before you answer. It makes better reading for
20 the record and creates less confusion for anyone
21 reading the transcript afterwards. Okay?

22 A Okay.

23 Q You need to be audible in your responses so
24 the reporter can take them down. So yes or no instead
25 of a shake of the head is helpful for the record.

26 If your counsel raises an objection, I'm
27 still entitled to get an answer unless he instructs you
28 not to answer. I want your reasonable belief as to
29 events that you think occurred, or testimony you think
30 is accurate. I don't want you guessing, but I'm
31 entitled to your reasonable recollection of events.

32 If you don't understand a question, I want
33 you to ask me to rephrase it or tell me what it is
34 you don't understand about the question so we can
35 get an accurate response.

36 Since all your answers are going to be
37 documented in a transcript, as you're aware, and any
38 changes to that testimony after the fact can be
39 commented on, and sometimes in a negative way if the
40 answers materially change from what the court
41 reporter has put down.

42 Do you understand everything so far?

43 A Yes, I do.

44 Q Are you taking any medications that might
45 affect your ability to provide information today or to
46 recollect events involving the subject matter of this
47 dispute?

48 A I don't know if I could comment whether they
49 would or not, but I do take heart medicine.

50 Q Will you not to be too stressful here. I do
51 appreciate your having accommodated my situation. Which
52 is much better now.

53 And if you need any breaks yourself, let me
54 know, we can certainly accommodate any reasonable
55 breaks you need, check voicemail, whatever. I know
56 you're a busy person, as we all are. We will take a
57 break mid-morning and a break for lunch. It is my
58 expectation we can be done today, depending what we
59 hear.

60 Let me get your full name for the record.

61 A Jeffrey Edward Hoffman.

62 Q Do you go by any other names?

63 A No.

64 Q Do you have any nicknames?

65 A No.

66 Q What's your educational experience?

67 A Schooling?

68 Q Yes.

69 A Graduate, Cal Poly, architecture.

70 Q Any postgraduate?

71 A No.

72 Q What did you do when you first got your

73 degree at Cal Poly?

74 A I was already doing

75 Q What's that?

76 A I was already developing and doing
77 construction projects at the time of which I graduated,
78 and continued to do so after I graduated.

79 Q Were you employed by somebody?

80 A Self.

81 Q What kind of projects?

82 A Predominantly housing, anywhere from one to
83 four units.

84 Q Where was this located?

85 A San Luis Obispo.

86 Q How old were you at the time when you
87 graduated?

88 A I graduated 1976.

89 Q So that would make you how old then?

90 A Twenty-five, 26.

91 Q When you say you were in business for
92 yourself, were you in business with anybody else, or
93 was it just a sole proprietorship?

94 A Sole proprietorship.

95 Q What was the name of it?

96 A I hadn't -- just me.

97 Q How long did you work in that area of

2 (Pages 5 to 8)

BELL & MYERS, CERTIFIED SHORTHAND REPORTER, INC. (408) 287-7500

B-3
Plaintiff's EOR-495

JEFF HOFFMAN, VOLUME I

DECEMBER 7, 2005

Q Has he ever provided accounting services for you?
A No.
Q How long have you known him?
A Ten years.
Q Do you know him socially?
A No.
Q You don't consider him a friend?
A I don't consider him an enemy.
Q Do you know if he has any interest in Norcal Financial Lending Services Inc.?
A I do not.
Q Does Ms. Gustavson provide legal services to any entities other than your entities?
A Again, I would be hazarding a guess, but I would presume so.
Q She is not your in-house counsel?
A It's on a contractual basis.
Q Where does she operate from?
A She operates out of our office at 5132.
Q How often is she in the office?
A Pretty much daily.
Q Have you had any discussions with Ms. Gustavson concerning her role as president of Norcal Financial Lending Services Inc.?
A I don't know.
Q Do you know how long they have been in business?
A A little over a year.
Q How many times have you used their Lending Services since they were formed?
A More than ten.
Q Do you receive any compensation, in any form whatsoever, from Norcal for arranging loans?
MR. PAHL: Which Norcal?
BY MR. GOODRICH:
Q Norcal Financial Lending Services Inc.
A No.
Q How about Norcal Financial Inc.?
A I have.
Q What kind of compensation have you received?
A It would usually be in the form of points.
(Defendants' Exhibit 1 marked for identification)
BY MR. GOODRICH:
Q Have you seen that document before?
A This whole document?
Q Yes.
A Yes.
Q That's the amended notice of your deposition for today. We asked that you bring an original of a document that you had produced in response to a document request.
Did you bring the original of that document with you?
A My comment to that is the original that I have is as original as the one with which you have, by one less reduction. One less copy. The only thing that I have is I have a copy which is the same as this year. Tom would have the original blue inked copy.
Q Where were you -- did you see him sign it?
A No, I did not.
Q So why do you think he has it?
A Because that's who would have a five-day recision is the individual who is involved in such would sign the acknowledgement that he had it. It would be set up as it's set right here, and if he so wanted to decline the deal, he would then sign it above where it states, and he would send that to me.
Q How long have you been aware of the need for a five-day notice of recision in a transaction like the one involving Elizabeth Street?
A Certainly from this date forward.
Q Not any earlier?
A I would say I was aware of it earlier. It

5 (Pages 21 to 24)

BELL & MYERS, CERTIFIED SHORTHAND REPORTER, INC. (408) 287-7500

B-4
Plaintiff's EOR-496

JEFF HOFFMAN, VOLUME I

DECEMBER 7, 2005

and marked as defendants' 5.
 BY MR. GOODRICH:
 Q Is that the lease you just referred to?
 A Correct.
 Q That's your signature on the last page?
 A Yes.
 Q Paragraph number 13, do you see "Other terms and conditions" says, "See addendum one."
 I'll represent to you that I did not receive anything called an addendum one. That in fact, the next document, No. 134, is an entirely new document, with the caption "Option Agreement."
 Was there any addendum number one to this document at the time you executed it?
 A I believe that would refer to the option.
 Q So did you consider this residential lease and option to be a combined document?
 A No.
 Q So why are you assuming that addendum number one refers to the option?
 A I hazard a guess.
 Q So it's just speculation?
 A Correct.
 Q Is there anything you can think of that would refresh your recollection as to what addendum number one referred to in this document?
 A Typically, it's an addendum.
 Q Wouldn't that be for a purchase agreement as opposed to a lease?
 A The uniqueness of this one is the fact that you're leasing back to an individual whom you've purchased from.
 Q So you're thinking that addendum number 1 may have been an addendum that you would typically see in a real estate sale transaction?
 A I believe so. It's possible.
 Q Who prepared this lease? And by that I mean the typewritten portions that are added to the form.
 A I can't say.
 Q Would it normally be someone in your office?
 A Typically.
 Q Would it be done at your supervision and instruction?
 A I would have certainly seen the document, yes.
 Q While I'm thinking of it, let me ask you the same questions with respect to Exhibit 1, the last page. There were some handwritten notations other than Mr. Lloyd's alleged signature. If you could take a look at that and see if you could identify whose handwriting that is.
 A (Complying).
 This stuff here? Are you referring to this document?
 Q Yes. There is handwritten notations in the blanks, other than Mr. Lloyd's alleged signature. If you know whose handwriting that is --
 A No, I don't.
 Q I believe you testified you were not present when Mr. Lloyd signed document No. 137.
 Do you know who was present when he signed it?
 A No, I don't.
 Q Do you have any idea where he was when he signed it?
 A I would presume a title company.
 Q Did you think that getting his signature on document No. 137 was pretty important?
 A This one right here?
 Q Yes.
 A Absolutely.
 Q You don't remember having any conversation with anyone about getting him to sign or having him sign document No. 137?
 A Specific to that document?
 Q Right.
 A Nothing in particular.
 Q Was it your understanding that if he didn't acknowledge receipt of that document that your transaction might in fact be rescindable at any time?
 A Well, you would certainly be in violation of the civil code.
 Q Did you think about getting him to notarize the signature?
 A I don't think it's a requirement.
 Q No. But did you think about it?
 A Not in particular.
 Q Do you have a notary in-house?
 A Yes.
 Q If he was at a title company, it would have had a notary there, right?
 A Presumably.
 Q Did you think about getting a witness to see he signed it?
 A No more than so than any of the other documents.
 Q Did you think about getting a duplicate original for your own files?
 A Typically, I don't.
 Q But did you think about it in this particular

11 (Pages 41 to 44)

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B-5
Plaintiff's EOR-497

JEFF HOFFMAN, VOLUME I

DECEMBER 7, 2005

1 BY MR. GOODRICH:
2 Q Let me put it this way, if what your counsel
3 produced did not include the purchase agreement, does
4 that mean that there was no purchase agreement --
5 written purchase agreement -- between my client and you
6 by which you acquired 940 Elizabeth?
7 A What it means is I didn't have it in my
8 possession.
9 Q So where would that be?
10 A I would only hazard a guess, but if it's not
11 in my file, I presume I do not have a copy of such.
12 Q Let's explore where it might be.
13 If it wasn't in your file, can you tell me
14 where it might be?
15 A Only as a pure guess. We don't want you to
16 guess.
17 Q Well, it wouldn't be on the freeway between
18 here and San Francisco would it?
19 MR. PAHL: That's a good guess.
20 THE WITNESS: Again, that's speculation. I
21 don't know.
22 BY MR. GOODRICH:
23 Q Do you recall misplacing it?
24 A No.
25 Q Do you recall it being destroyed?
26 without being attached to anything?
27 A It's possible.
28 Q When you produced the documents and it
29 involved a document that had a staple to keep several
30 pages together, did you produce it as a stapled
31 document?
32 A I don't know.
33 Q When did you first meet Mr. Lloyd?
34 A I can tell you the location. I don't know
35 the specific date.
36 Q What is the location?
37 A Fresno.
38 Q What was the occasion of that meeting?
39 A To hammer out a settlement.
40 Q Is the settlement that was memorialized by a
41 written settlement agreement that was executed after
42 you sued him to recover possession of 940 Elizabeth
43 Street?
44 A State that again. Say that again.
45 (Record read Q Is the settlement that was
46 memorialized by a written settlement
47 agreement that was executed after you sued
48 him to recover possession of 940 Elizabeth
49 Street?)
50 THE WITNESS: Yes.

1 A No.
2 Q Do you recall giving it to somebody?
3 A No.
4 Q When was the last time you saw the purchase
5 agreement?
6 A That would presume that I did see it. And
7 I'm not trying to be evasive, but I'll be honest with
8 you. I can't recall, specifically, this particular
9 project, seeing a purchase agreement. I would have
10 recalled had I made some copies of it, sent it off. I
11 do not recall that.
12 Q When you produced document 137, which is the
13 exhibit to Exhibit 1 -- it is called Notice of Right to
14 Rescind -- take a look at that.
15 A Okay.
16 Q What's the title of that?
17 A Notice of Cancellation.
18 Q When you found that, where was that document?
19 A Be in the file.
20 Q Just by itself?
21 A No, it would be in the file.
22 Q Was it attached to anything?
23 A I don't know if it was or not.
24 Q You produced it by itself without it attached
25 to anything. Does that mean that it was by itself

1 BY MR. GOODRICH:
2 Q Prior to that meeting, you had not met him in
3 person?
4 A No.
5 Q Had you spoken with him on the phone?
6 A Yes.
7 Q How many occasions?
8 A More than ten.
9 Q Do you recall when your first conversation
10 was?
11 A No, I don't.
12 Q Do you recall the substance of your first
13 conversation?
14 A To the best of my recollection, it would be
15 relative to making lease payments.
16 Q Lease payments for what property?
17 A That would be Elizabeth.
18 Q So is it fair to say that that first
19 conversation would have occurred after he entered into
20 a lease with you for 940 Elizabeth?
21 A Correct.
22 (Defendants' Exhibit 5 marked for
23 identification)
24 MR. GOODRICH: For the record, this is
25 Mr. Hoffman's document 130, through and including, 133.

10 (Pages 37 to 40)

JEFF HOFFMAN, VOLUME I

DECEMBER 7, 2005

1 can recall relative to a settlement agreement that
2 would mirror this.

3 Q Because I think what you were telling us
4 earlier is that you and Mr. Blum discussed the amount
5 of H and B's claim, and you basically agreed to
6 disagree. So I'm kind of surprised to see that the
7 time Mr. Blum receives a demand about H and B's claim,
8 you don't know anything about it.

9 Can you explain that?

10 A It appears as though he dealt directly with
11 Julie. It appears he was not going -- he went directly
12 to Julie.

13 Q Are you aware that an attorney who knows an
14 adverse party is represented by counsel can't talk
15 directly to that adverse party, but in fact must talk
16 to that person's attorney?

17 A Yes, I'm aware of that.

18 Q Did you ever send Mr. Blum any writing
19 authorizing him to talk with you directly?

20 A Say that again.

21 (Read back: Q Did you ever send Mr. Blum
22 any writing authorizing him to talk with you
23 directly?)

24 THE WITNESS: No.

25 MR. PATTLE: It's after 2 o'clock.

CERTIFICATE

1 I, JAN SERRA, CSR #8207, do hereby
2 certify:

3 That prior to being examined, the witness
4 named in the foregoing deposition was by me duly
5 sworn to testify the truth, the whole truth, and
6 nothing but the truth.

7 That said deposition was taken down by me
8 in shorthand at the time and place therein named, and
9 thereafter reduced to typewriting under my direction.

10 I further certify that I am not interested
11 in the outcome of the action.

12 Witness my hand this _____ day of _____
13 2005.

14 JAN SERRA

15 CSR No. 8207

1 MR. GOODRICH: Copy.

2
3 (Whereupon, the deposition of JEFF HOFFMAN was
4 adjourned at 2:10 p.m.)

5
6
7 JEFF HOFFMAN

8 Date: _____

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10 --o0o--

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31 (Pages 121 to 123)

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B-7
Plaintiff's EOR-499

PAHL & GOSSELIN

A Professional Corporation

Stephen D. Pahl, Esq. (State Bar No. 97960)**Cheri L. MacArthur, Esq.** (State Bar No. 190724)

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Facsimile No.: (408) 286-5722

Attorneys for Plaintiff and Cross-Defendant

JEFFREY E. HOFFMAN**UNITED STATES BANKRUPTCY COURT****NORTHERN DISTRICT OF CALIFORNIA****SAN FRANCISCO DIVISION**

In re:

THOMAS LLOYD,

Debtor.

JEFFREY E. HOFFMAN,

Plaintiff,

v.

**THOMAS R. LLOYD, an individual,
EDWARD L. BLUM, an individual, and
DOES 1 through 20, inclusive,**

Defendants.

AND RELATED ACTIONS.

Case No. 04-32921 TEC

Adversary No. 05-03328

Chapter 11

**RESPONSE TO REQUEST FOR
PRODUCTION OF DOCUMENTS,
SET ONE****PROPOUNDING PARTY:** Debtor/Defendant/Cross-Complainant **THOMAS LLOYD****RESPONDING PARTY:** Plaintiff/Cross-Defendant **JEFFREY E. HOFFMAN****SET NUMBER:** OnePlaintiff and Cross-Defendant **JEFFREY E. HOFFMAN** ("Responding Party") hereby
responds to the "Response to Request for Production of Documents, Set One" propounded byDebtor/Defendant/Cross-Complainant **THOMAS LLOYD** ("Propounding Party").

///

EXHIBIT BC**RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS****Plaintiff's EOR-500**

PRELIMINARY STATEMENT

It should be noted that Responding Party has not fully completed investigation of the facts relating to this case, has not fully completed discovery in this action, and has not completed preparation for trial. All of the responses contained herein are based only upon such information and documents which are presently available and specifically known to Responding Party. It is anticipated that further discovery, independent investigation, legal research and analysis may supply additional facts, add meaning to the known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the responses and contentions hereinafter set forth. The following responses are given without prejudice to Responding Party's right to produce evidence of any subsequently discovered fact or facts which this Responding Party may later recall or discover. Responding Party accordingly reserves the right to change or supplement any and all responses herein as additional facts are ascertained, analysis are made, legal research is completed, and contentions are made. The responses contained herein are made in a good faith effort to supply as much factual information and as much specification of legal contentions as is presently known, but should in no way be to the prejudice of Responding Party in relation to further discovery, investigation, research, or analysis.

RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

Produce all DOCUMENTS that refer to, relate to, or CONCERN YOUR ownership of the ELIZABETH STREET PROPERTY at any time, including but not limited to grant deeds, deeds of trust, purchase and sale agreements, leases and title reports.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Responding Party objects to this request on the grounds that it is overbroad, unduly burdensome and oppressive. Responding Party also objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and/or work product doctrines. Responding Party further objects to this request on the ground that it seeks documents equally

Pal Josselin
V. J Corp
CO. CLM 30
Fourteenth Floor
San Jose, CA 95131
408.266.5100

1 available to Propounding Party. Without waiving these objections, Responding Party
 2 responds as follows: Responding Party will produce all documents in his possession, custody
 3 and control that are responsive to this request.

4 **REQUEST FOR PRODUCTION NO. 2:**

5 Produce all DOCUMENTS that refer to, relate to, or CONCERN the transaction
 6 between YOU AND LLOYD whereby YOU acquired title to the ELIZABETH STREET
 7 PROPERTY, including but not limited to any option agreement, the lease agreement, grant
 8 deeds, escrow documents, title reports and appraisals.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

10 Responding Party objects to this request on the grounds that it is overbroad, unduly
 11 burdensome and oppressive. Responding Party also objects to this request on the grounds that
 12 it seeks documents protected by the attorney-client privilege and/or work product doctrines.
 13 Responding Party further objects to this request on the ground that it seeks documents equally
 14 available to Propounding Party. Without waiving these objections, Responding Party
 15 responds as follows: Responding Party will produce all documents in his possession, custody
 16 and control that are responsive to this request.

17 **REQUEST FOR PRODUCTION NO. 3:**

18 Produce all DOCUMENTS that refer to, relate to, or CONCERN any right of
 19 rescission you gave LLOYD, or you agree LLOYD has, in connection with YOUR purchase of
 20 the ELIZABETH STREET PROPERTY from LLOYD.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

22 Responding Party objects to this request on the grounds that it seeks documents
 23 protected by the attorney-client privilege and/or work product doctrines. Responding Party
 24 also objects to this request on the ground that it seeks documents equally available to
 25 Propounding Party. Without waiving these objections, Responding Party responds as follows:
 26 Responding Party will produce all documents in his possession, custody and control that are
 27 responsive to this request.

28 ///

Pl: Gosselin
 V. P. 1 Corp.
 180 W. 1st St.
 San Francisco, CA 94111
 415.396.5500

REQUEST FOR PRODUCTION NO. 4:

Produce all DOCUMENTS that refer to, relate to, or CONCERN the deed of trust encumbering the ELIZABETH STREET PROPERTY in favor of Norcal Financial, Inc.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Responding Party objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and/or work product doctrines. Responding Party also objects to this request on the ground that it seeks documents equally available to Propounding Party. Without waiving these objections, Responding Party responds as follows: Responding Party will produce all documents in his possession, custody and control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 5:

Produce all DOCUMENTS that refer to, relate to, or CONCERN any obligation secured by the deed of trust encumbering the ELIZABETH STREET PROPERTY in favor of Noreal Financial, Inc.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Responding Party objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and/or work product doctrines. Responding Party also objects to this request on the ground that it seeks documents equally available to Propounding Party. Without waiving these objections, Responding Party responds as follows: Responding Party will produce all documents in his possession, custody and control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 6:

Produce all DOCUMENTS that refer to, relate to, or CONCERN Norcal Financial, Inc.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Responding Party objects to this request on the ground that it seeks documents irrelevant to this action and not reasonably calculated to lead to the discovery of admissible evidence. Responding Party objects to this request on the grounds that it is overbroad, unduly

1 burdensome and oppressive. Responding Party also objects to this request on the ground that
 2 it fails to identify any category of documents to be produced with any particularity, rendering
 3 it vague and ambiguous. Responding Party further objects to this request on the grounds that
 4 it seeks documents protected by the attorney-client privilege and/or work product doctrines.
 5 As such, Responding Party cannot produce documents responsive to this request.

6 **REQUEST FOR PRODUCTION NO. 7:**

7 Produce all DOCUMENTS that refer to, relate to, or CONCERN any
 8 COMMUNICATIONS with LLOYD about the Settlement Agreement and Mutual Release
 9 Agreement dated August 3, 2004.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

11 Responding Party objects to this request on the ground that it seeks documents
 12 protected by the attorney-client privilege and/or work product doctrines. Without waiving
 13 these objections, Responding Party is unable to produce any documents responsive to this
 14 request, because other than privileged documents, Responding Party was unable to locate any
 15 documents responsive to this request. Responding Party believes that he was unable to locate
 16 such documents because they never existed.

17 **REQUEST FOR PRODUCTION NO. 8:**

18 Produce all DOCUMENTS that refer to, relate to, or CONCERN any consideration
 19 you gave LLOYD to purchase his interest in the ELIZABETH STREET PROPERTY.

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

21 Responding Party objects to this request on the grounds that it is overbroad, unduly
 22 burdensome and oppressive. Responding Party also objects to this request on the grounds that
 23 it seeks documents protected by the attorney-client privilege and/or work product doctrines.
 24 Responding Party further objects to this request on the ground that it seeks documents equally
 25 available to Propounding Party. Without waiving these objections, Responding Party
 26 responds as follows: Responding Party will produce all documents in his possession, custody
 27 and control that are responsive to this request.

28 ///

REQUEST FOR PRODUCTION NO. 9:

Produce all DOCUMENTS that refer to, relate to, or CONCERN any COMMUNICATIONS with LLOYD about the ELIZABETH STREET PROPERTY.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Responding Party objects to this request on the grounds that it is overbroad, unduly burdensome and oppressive. Responding Party also objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and/or work product doctrines. Responding Party further objects to this request on the ground that it seeks documents equally available to Propounding Party. Without waiving these objections, Responding Party responds as follows: Responding Party will produce all documents in his possession, custody and control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 10:

Produce all DOCUMENTS that refer to, relate to, or CONCERN any obligation secured by a deed of trust encumbering the ELIZABETH STREET PROPERTY in favor of Greenpoint Mortgage.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Responding Party objects to this request on the grounds that it is overbroad, unduly burdensome and oppressive. Responding Party also objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and/or work product doctrines. Responding Party further objects to this request on the ground that it seeks documents equally available to Propounding Party. Without waiving these objections, Responding Party responds as follows: Responding Party will produce all documents in his possession, custody and control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 11:

Produce all DOCUMENTS that refer to, relate to, or CONCERN any COMMUNICATIONS between HOFFMAN and Greenpoint Mortgage concerning Greenpoint's Mortgage's loan secured by the ELIZABETH STREET PROPERTY.

///

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Responding Party objects to this request on the grounds that it is overbroad, unduly burdensome and oppressive. Responding Party also objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and/or work product doctrines.

Responding Party further objects to this request on the ground that it seeks documents equally available to Propounding Party. Without waiving these objections, Responding Party responds as follows: Responding Party will produce all documents in his possession, custody and control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 12:

Produce all DOCUMENTS that refer to, relate to, or CONCERN any obligation that H & B Properties claims that LLOYD owes H & B Properties.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Responding Party objects to this request on the grounds that it is overbroad, unduly burdensome and oppressive. Responding Party also objects to this request on the grounds that it seeks documents protected by the attorney-client privilege and/or work product doctrines.

Responding Party further objects to this request on the ground that it seeks documents equally available to Propounding Party. Responding Party still further objects to this request on the ground that it is vague and ambiguous as to its use of the term "any obligation" and to the extent that it does not specify a relevant period of time. Without waiving these objections, Responding Party responds as follows: Responding Party will produce all documents in his possession, custody and control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 13:

Produce all DOCUMENTS that refer to, relate to, or CONCERN any COMMUNICATIONS with LLOYD about the Norcal Financial, Inc., obligation secured by the ELIZABETH STREET PROPERTY.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Responding Party objects to this request on the ground that it seeks documents protected by the attorney-client privilege and/or work product doctrines. Without waiving


these objections. Responding Party is unable to produce any documents responsive to this request, because other than privileged documents, Responding Party was unable to locate any documents responsive to this request. Responding Party believes that he was unable to locate such documents because they never existed.

AS TO OBJECTIONS ONLY:

DATED: November 28, 2005

PAHL & GOSSELIN
A Professional Corporation

By:


Chen L. MacArthur

Attorneys for Plaintiff and Cross-Defendant
JEFFREY E. HOFFMAN

Pa. Gosselin
A Professional Corporation
400 W. 4th St.
San Jose, CA 95113
(408) 286-5100

In re Thomas Lloyd Hoffman v. Lloyd
Case No. 04-32921; Adversary Case No. 05-03328

PROOF OF SERVICE

State of California)
) ss
County of Santa Clara)

I am a citizen of the United States and an employee of the County aforesaid. I am over the age of eighteen years and not a party to the within action. My business address is 160 West Santa Clara Street, 14th Floor, San Jose, California 95113-1700. On the date mentioned below, I caused a true copy(ies) of the following document(s) to be served on the parties below using the method(s) checked:

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE

on the Addressee(s) below named in said action by:

- ☒ First Class Mail. I am familiar with the regular mail collection and processing practices of the business. The mail will be deposited with the United States Postal Service on the same day following ordinary business practices. I enclosed the above-mentioned document(s) in a sealed envelope with postage thereon fully prepaid in the United States Post Office mail box at San Jose, California.
- ☐ Express Mail Delivery.
- ☐ E Filing.
- ☐ By Personal Delivery.
- ☐ By Federal Express.

Addressee(s):

Jeffrey J. Goodrich
Law Offices of Goodrich and Associates
336 Bon Air Center, Suite 335
Greenbrae, CA 94904
T: (415) 925-8630

Jerry R. Hauser
Phillips, Greenberg & Hauser
4 Embarcadero Center, 39th Floor
San Francisco, CA 94111
T: (415) 981-7777

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on November 28, 2005 at San Jose, California.


Elaine Durand

Pat Gosselin
A.L. Corp
160 W. Santa Clara St
Embarcadero Floor
San Jose, CA 95113
408 295-5100


VERIFICATION AS TO ANSWERS ONLY

I, the undersigned, certify and declare that I have read the foregoing "Request for Production of Documents, Set One" and know its contents.

I am a party to this action. The matters stated in the document described above are true of my own knowledge and belief except as to those matters stated on information and belief, and to those matters, I believe them to be true.

I have read the above and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 28th day of November, 2006, at Fresno, California.


Jeffrey E. Hoffman

FBI & Gosselin
A Production Corp.
181 W. 5th Street
San Francisco, CA 94111
(415) 218-3100

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9

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS

(Case No. 03-2001 TCR Act No. 7)

E-10

T 4

Plaintiff's EOR-509

CANB Live Database

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Miscellaneous:

05-03328 Hoffman v. Lloyd et al

U.S. Bankruptcy Court

Northern District of California

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